

Minnesota Pollution Control Agency

May 31, 1985

Ms. Joan Growe
Secretary of State
Room 180 State Office Building
435 Park Street
St. Paul, MN 55155

Dear Madame Secretary:

Pursuant to Minn. Stat. § 115.20 subd. 9 (1984) I am delivering to you with this letter a certified copy of the order of the Minnesota Pollution Control Agency dated March 26, 1985, creating the Plainview-Elgin Sanitary Sewer District. Please file this Order in your Office as required by law.

Very truly yours,

for Thomas J. Kalitowski
Executive Director

Enclosure

TJK/mlj

STATE OF MINNESOTA
DEPARTMENT OF
JUN 5 1985

Joan
Secretary of State

836074

Phone: _____

1935 West County Road B2, Roseville, Minnesota 55113-2785

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STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

I, Ruth M. Gross, Secretary to the Minnesota Pollution Control Agency Board, do hereby certify that the attached Findings of Fact, Conclusions and Order is a true and correct copy of the Findings of Fact, Conclusions and Order of the Minnesota Pollution Control Agency adopted by the Agency on March 26, 1985 relating to the creation of the Plainview-Elgin Sanitary Sewer District.

Ruth M. Gross

Ruth M. Gross
Secretary to the Board
Minnesota Pollution Control Agency

Dated this 31st Day
of May, 1985

Mary Ann Hammer
Notary Public

XX
MARY ANN HAMMER
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires Dec. 11, 1985
XX

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUN 5 1985
Jean Anderson Howe
Secretary of State

36076

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Petition
by the Cities of Plainview and
Elgin for the Formation of the
Plainview-Elgin Sanitary Sewer
District

FINDINGS OF FACT
CONCLUSIONS AND
ORDER

The above-entitled matter came on for hearing before Allan W. Klein, Administrative Law Judge from the State Office of Administrative Hearings, on November 13, 1984, in Plainview. The hearing continued on February 4, 1985, in Plainview as more fully described below.

The following persons appeared at the November 13, hearing: For the City of Plainview, Steven L. Erwin, City Attorney, Gartner, Burkhardt, Schulman, Ekstrand & Nordstrom, Ltd., Attorneys at Law, 275 First Street S.W., P.O. Box 426, Plainview, Minnesota 55964-0426. For the City of Elgin, Robert R. Dunlap, City Attorney, Dunlap, Keith, Finseth, Berndt & Sandberg, PA., Attorneys at Law, 505 Marquette Bank Building, P.O. Box 549, Rochester, Minnesota 55903. For the staff of the Minnesota Pollution Control Agency (hereinafter "MPCA" or "Agency"), Alan R. Mitchell, Special Assistant Attorney General, 1935 West County Road B-2, Roseville, Minnesota 55113. At the February 4 hearing, the only change was that Peter H. Burkhardt appeared in place of Steve Erwin for the City of Plainview.

The record closed on February 7, 1985.

On February 13, 1985, the Administrative Law Judge issued his Report, including Findings of Fact, Conclusions and Recommendations. The matter then came on before the Agency at its regular monthly meeting on March 26, 1985.

The Agency, having considered the Report of the Administrative Law Judge and the record created herein, and after affording all interested persons an opportunity to be heard, and being fully advised in the matter, hereby makes the following

FINDINGS OF FACT

The Agency hereby adopts as its Findings of Fact the findings of the Administrative Law Judge in his report dated February 13, 1985.

Based upon the foregoing Findings of Fact, the Agency hereby makes the following

CONCLUSIONS

1. The Agency has complied with all the procedural requirements of Minn. Stat. § 115.20 (1984), as well as other substantive and procedural requirements of law and rule. This matter is, therefore, properly before the Agency.

2. The conditions described in Minn. Stat. § 115.19 (1984) for the creation of a sanitary sewer district do exist within the corporate limits of the Cities of Plainview and Elgin, including areas in Plainview Township proposed for the location of the sewage treatment facilities.

3. Any of the foregoing Findings of Fact that might properly be termed Conclusions, and any Conclusions that might properly be termed Findings, are hereby adopted as such.


NOW THEREFORE, the Minnesota Pollution Control Agency hereby makes the following

ORDER

IT IS ORDERED that the Plainview-Elgin Sanitary Sewer District is hereby created to include the Cities of Plainview and Elgin and the land and easements necessary to construct and operate a sewage treatment plant in Plainview Township.

Dated this 26th day of March, 1985.


DUANE A. DAHLBERG
Chairman
MPCA


THOMAS J. KAVUTOWSKI
Executive Director
MPCA

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Petition by
the Cities of Plainview and Elgin
for the Formation of the Plainview-
Elgin Sanitary Sewer District.

FINDINGS OF FACT
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Allan W. Klein, Administrative Law Judge from the State Office of Administrative Hearings, on November 13, 1984, in Plainview. The hearing continued on February 4, 1985 in Plainview as more fully described below.

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The record closed on February 7, 1985.

Notice is hereby given that, pursuant to Minn. Stat. § 14.61 the final decision of the MPCA Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Board. Exceptions to this Report, if any, shall be filed with the Executive Director of the MPCA, Thomas J. Kalitowski, Minnesota Pollution Control Agency, 1935 West County Road B-2, Roseville, Minnesota 55113.

STATEMENT OF ISSUE

Have the Cities of Plainview and Elgin, as joint Petitioners for the creation of the proposed District, satisfied the statutory prerequisites for the creation of a sanitary sewer district?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On June 25, 1984, the Cities of Plainview and Elgin (hereinafter jointly referred to as the "Cities" or "Petitioners") submitted a Petition to the Minnesota Pollution Control Agency pursuant to Minn. Stat. § 115.20 (1982) for the formation of the Plainview-Elgin sanitary sewer district (hereinafter "District").

2. On September 25, 1984, the Agency's Board authorized the holding of a contested case hearing on the application.

3. On October 9, the Agency's Notice and Order for Hearing was issued setting the hearing in this matter for November 13, 1984, in Plainview.

4. On October 11, 1984, copies of the Notice were mailed to the Mayors and City Clerks of the Cities, the County Boards of Olmsted, Wabasha and Goodhue Counties, and various affected townships.

5. On October 30, 1984, a large display advertisement was published in the Plainview News. Despite both written and oral instructions that the advertisement was to be published once each week for two successive weeks, the advertisement was only published once.

6. On November 13, 1984, the hearing was held. Testimony was taken from persons representing the agency staff and both Cities. During the course of the hearing, it was discovered that the display advertisement had only been published once. All other jurisdictional prerequisites had been satisfied. The parties were invited to submit memoranda on the issue of whether or not the single publication constituted adequate compliance with Minn. Stat. § 115.20, subd. 4 (1982), which requires publication of the notice on two successive weeks.

7. On December 14, 1984, the Administrative Law Judge informed the parties that the publication issue did constitute a jurisdictional defect and that the hearing would have to be renoticed and reconvened.

8. On December 20, 1984, the Agency issued a second Notice of and Order for Hearing, setting the hearing for February 4, 1985, in Plainview.

9. On December 21, 1984, the Agency mailed new notice to the same entities to which it had mailed first notice.

10. On December 22, 1984, a copy of the Notice was posted in the Plainview City Hall.

11. On December 29, 1984, a copy of the Notice was posted at the Elgin City Hall.

12. On January 22 and January 29, 1985, a display advertisement announcing the hearing was published in the Plainview News.

13. At the February 4 reconvened hearing, the record of the proceedings at the November 13 hearing was reintroduced into the hearing record.

14. Both the City of Plainview and the City of Elgin have developed a facilities plan that addresses the requirements of sewage treatment for each City. Both Cities concluded in their facilities plans that a combined wastewater treatment plant located in Plainview Township, but serving both communities, is cost-effective.

15. The MPCA has approved both facilities plans and has awarded a construction grant to the City of Plainview for construction of a sewage treatment plant on an 8-acre site in Plainview Township. Once the sanitary sewer district is formed, the District will become the grantee.

16. Both of the existing sewage treatment plants in the two Cities are in extremely poor condition. The Plainview plant was built around 1942, is hydraulically and organically overloaded, has been required in the past to bypass raw sewage on occasion, and has been cited by the MPCA with a Notice of Violation. The Elgin facility is also hydraulically and organically overloaded and in need of improvement.

17. It is not cost-effective to replace both the Plainview facilities and the Elgin facilities with new plants.

18. There is a need for improved sewage treatment through the territory of the proposed District.

19. A sanitary sewer district will best suit the type of treatment facility that is proposed. The County does not have the authority to take on this responsibility. Although an inter-municipal agreement could be used to accomplish the same purpose, a separate entity can more efficiently manage the facility, since two City Councils do not have to be involved in management decisions. A sanitary sewer district was the preferred choice of both City Councils.

20. There are no other agencies available to take on the responsibilities of a regional waste water facility.

21. Sanitary sewer districts have been formed throughout Minnesota. The largest of these is the Western Lake Superior Sanitary Sewer District in Duluth. The nearest to Plainview-Elgin is the Dover-Eyota-St. Charles Sanitary Sewer District. These Districts function well. Because treatment takes place at one facility, municipal sewage can be managed more efficiently and at a lower cost. Also, cost can be distributed evenly over the entire district.

22. The Cities have already begun to allocate costs between themselves.

23. Sewage treatment will be effectively accomplished on an equitable basis.

24. The Cities have submitted a draft inter-municipal agreement to form the sanitary sewer district. The draft agreement forms a satisfactory mechanism for the administration of a sanitary sewer district.

25. There was no opposition expressed to the formation of the District, nor were any of the City Officials aware of any current opposition. Some residents may be opposed to increases in sewer charges, but formation of a sanitary sewer district will help, in the end, to minimize any increases.

26. The creation and maintenance of the Plainview-Elgin sanitary sewer district is administratively feasible.

27. Both existing treatment facilities discharge into tributaries of the Whitewater River. This river has been designated by the Minnesota Department of Natural Resources as a trout stream. The elimination of the existing discharges, particularly since they often exceed effluent limitations, will improve the condition of the Whitewater River.

28. The new facility will employ an equalization basin, two oxidation ditches, two final clarifiers, and chlorination. Discharge will be to an unnamed tributary to the North Fork of the Whitewater River. This new facility, along with the elimination of the two old existing plants, will improve water quality in Whitewater River.

29. Formation of the sanitary sewer district will further the public health, safety, and welfare of the territory of the District.

30. Neither Plainview or Elgin is within 25 miles of a city of the first class.

Based upon the foregoing Findings, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Agency has complied with all the procedural requirements of Minn. Stat. § 115.20 (1984), as well as other substantive and procedural requirements of law and rule. This matter is, therefore, properly before the Administrative Law Judge and the Agency Board.

2. The conditions described in Minn. Stat. § 115.19 (1984) for the creation of a sanitary sewer district do exist within the corporate limits of the Cities of Plainview and Elgin, including areas in Plainview Township proposed for the location of the sewage treatment facilities.

3. Any of the foregoing Findings of Fact that might properly be termed Conclusions, and any Conclusions that might properly be termed Findings, are hereby adopted as such.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

That the Minnesota Pollution Control Agency issue an Order for the creation of the Plainview-Elgin sanitary sewer district to include the Cities of Plainview and Elgin and land and easements necessary for construction and operation of a sewage treatment plant to be located in Plainview Township.

Dated this 13th day of February, 1985.

Allan W. Klein

ALLAN W. KLEIN
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Tape Recorded (Both Sessions)

MEMORANDUM

No substantial opposition to the creation of the proposed District was voiced at either hearing. At the second hearing, some questions were asked and answered concerning easements for the outfall of the proposed new facility. In addition, one person raised some aesthetic concerns about the location chosen for the treatment plant. But no person raised any questions about the wisdom of forming a district or whether this proposed District satisfied all of the statutory criteria for creation of a district.

A.K.

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