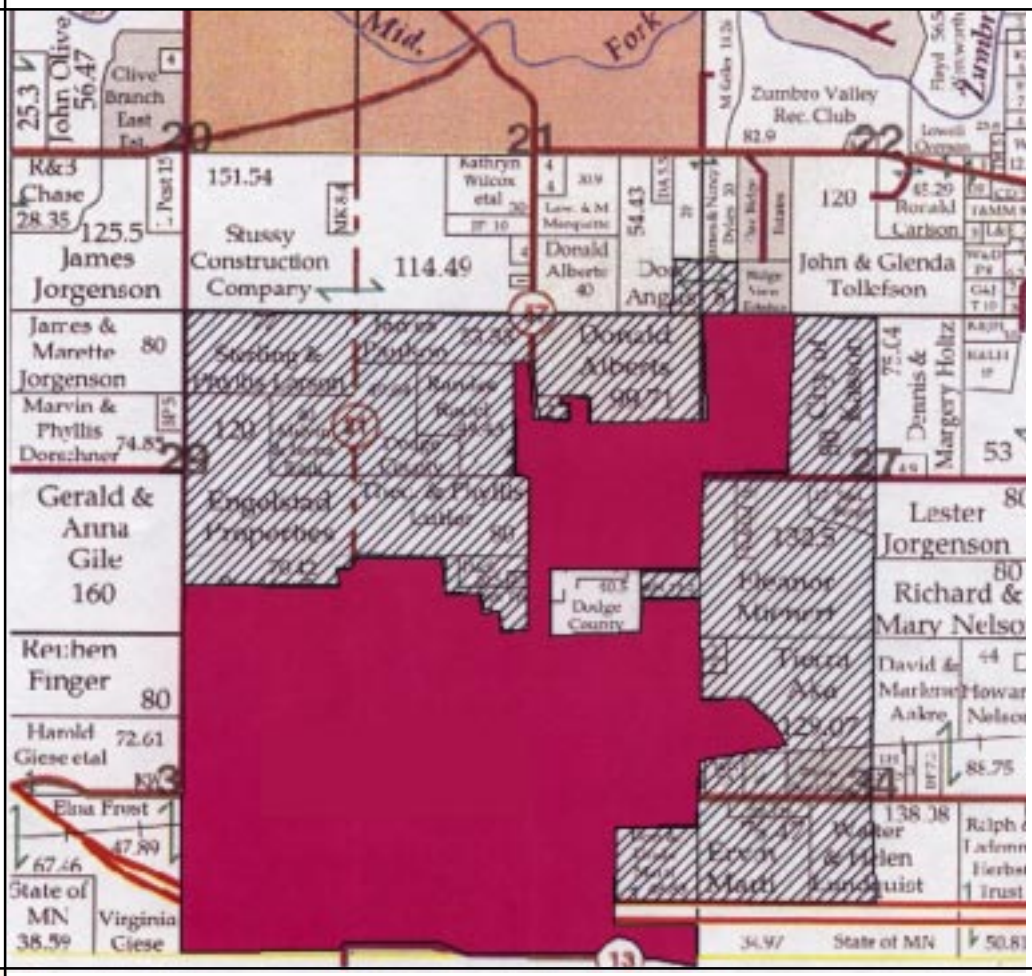
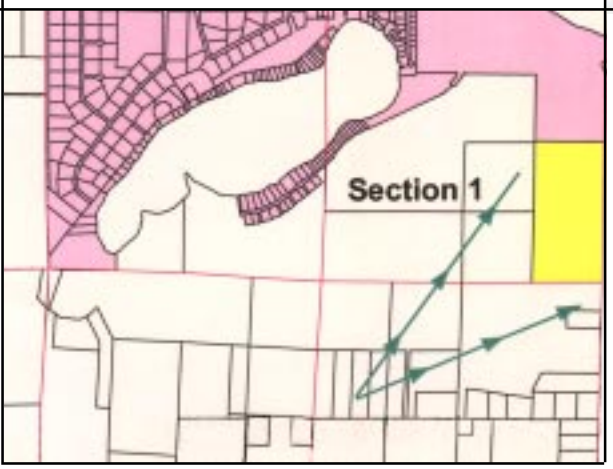
FEBRUARY 2002

City Limits:

A Report to the Minnesota Legislature on Municipal Boundary Adjustments





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MINNESOTA PLANNING

Room 300
658 Cedar St.
St. Paul, MN 55155
651-296-3985

www.mnplan.state.mn.us

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Minnesota Planning develops long-range plans for the state, stimulates public participation in Minnesota's future and coordinates public policy among state agencies, the Minnesota Legislature and other units of government.

City Limits: A Report to the Minnesota Legislature on Municipal Boundary Adjustments was prepared in response to Minnesota Laws of 2000, Chapter 446 requiring a report this year on the effects of the transfer of duties and authority under Minnesota Statutes Chapter 414. This report was prepared by the municipal boundary adjustment staff which resulted from the sunset of the Minnesota Municipal Board and the transfer of all its duties and responsibilities to Minnesota Planning pursuant to Laws 1997, Chapter 202, Art. 5 sec. 8; and Laws 1999, Chapter 243, Art. 16, sec. 24.

Municipal Boundary Adjustments implements the decisions and orders of the Director, and other delegated decision-makers, regarding the approval or disapproval of the creation or dissolution of municipalities, or alteration of municipal boundaries through consolidation, annexation or detachment of land. The boundary adjustment staff reviews approximately 350 to 400 boundary adjustments annually.

The cost to prepare and publish this report was approximately $20,000.

Cover Credits:
City of St. Cloud Planning Department
City of Kasson
City of Pleasant Lake

For further information contact:

Christine M. Scotillo, Municipal Boundary Adjustments Director, at 651-284-3386
Or christine.scotillo@mnplan.state.mn.us

This report is posted at Minnesota Planning's Internet site: www.mnplan.state.mn.us

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SUMMARY

This report was prepared, at the direction of the Legislature, to describe the effects of the transfer of the duties and authority under Minnesota Statutes, Chapter 414 following the sunset of the Minnesota Municipal Board on June 1, 1999.

The vast majority of municipal boundary adjustments are uncontested. The effect of the Municipal Board sunset on these proceedings has been, for the most part, administrative in nature. The most dramatic changes affect proceedings that require an administrative hearing prior to final decision. These proceedings accounted for approximately three percent of the state's municipal boundary adjustments since the sunset of the Municipal Board.

Still, shifting the statutory authority of Minnesota Statutes Chapter 414 from a single board of public interest to a revolving cast of decision-makers has had a subtle but growing effect on the cohesive administration of municipal boundary adjustments as a whole.

Uncontested proceedings are now administered largely in isolation of contested proceedings. Files that are contested are handled by individuals yet to be determined at the time of delegation. The result is a mixture of statutory interpretation from a number of decision-makers. This in turn, has produced an undercurrent of inconsistency.

Although recent changes to Chapter 414 have had little impact on the vast majority of proceedings, the perceptual change has been enormous, from both positive and negative perspectives. Cities and townships appear to be more divided than they were before the Municipal Board sunset and property owners are insisting on having more say in the land use decisions of their local governments.

Crafting a boundary adjustment process that enjoys widespread support from all stakeholders and participants requires a clear statement of legislative policy as a first step. Until that occurs, the current process may only be a temporary fix to providing a stable environment for municipal growth.

STATISTICALLY THE SAME

Under the administration of Minnesota Planning, the current process for adjusting municipal boundaries enjoys the same level of success as the process administered by the Municipal Board. Most boundary adjustments continue to be processed as uncontested matters. Adjustments have increased steadily over the last five years. The increase in municipal growth was consistent with a booming economy in the 1990s, fueled by the strong housing market and construction industry.

Since 1996, the number of contested proceedings filed annually has remained virtually the same. The sunset of the Municipal Board has had little effect on the number of contested proceedings.

DRAMATIC DIFFERENCES IN PERCEPTIONS

The sunset of the Municipal Board has rekindled some long-standing feuds between interested stakeholders. Cities perceived the sunset as a long overdue and necessary change to improving the boundary adjustment process. Overall, feedback from city participants and associations indicates a substantial increase in satisfaction with the current process. In particular, cities are pleased with the use of administrative law judges.

Townships, on the other hand, have made it clear that they are not in a better position since the sunset of the Municipal Board. The creation of a new association devoted to

addressing township concerns on annexation issues signals dissatisfaction with the current process. Townships cite the 1992 changes to Chapter 414 (addition of 60-acre annexation by ordinance and loss of right to vote), the sunset of the board and the rising costs of contested proceedings as shrinking their opportunity for meaningful participation in the process. In particular, townships are decidedly against continued use of administrative law judges as final decision-makers.

MEDIATION WIDELY ACCEPTED

As divided as individual parties and local government associations are with respect to the current state of contested proceedings, they appear to be united in their support of mediation in the prehearing boundary adjustment process. Five contested proceedings during the timeframe of this report were resolved in mediation. Mediators received high marks; the most sought-after mediators are former Municipal Board members as parties gravitate towards individuals experienced and knowledgeable in boundary adjustments.

Despite the widespread support for mediation, some concerns have surfaced. As one mediator observed, mediation is a process of compromise which may not produce the best result for a legal issue. Some mediations have resulted in agreements containing terms and conditions not authorized by Chapter 414.

The concern regarding the increase in costs for contested hearings has not surfaced in mediation where the costs are comparatively modest, averaging from $2,000 to $4,000 per case, and generally split among the parties.

ARBITRATION REJECTED

Since 1997, the use of arbitration has been available to parties under Chapter 414 as a substitute for a contested hearing. This option has never been exercised by any party. Shortly after the Municipal Board sunset, stakeholders agreed to yet another method of arbitration as a replacement for the board's decision-making authority in contested matters.

In 1999, the ability of the Director of Minnesota Planning to order parties into arbitration was successfully challenged in court. As a result, the director has not required arbitration unless all parties agree to use it. Agreement to use arbitration among parties to a contested proceeding has not happened, nor is it likely to in the future. Consequently, contested proceedings are delegated to the Office of Administrative Hearings for assignment of administrative law judges.

As yet, arbitration has never been used because parties still reject it as a decision-making process for municipal boundary adjustments. Interested stakeholders are philosophically split on the use of administrative law judges as the appropriate decision-makers for contested proceedings.

ADMINISTRATIVE HEARINGS COSTS SKYROCKET

Costs of contested proceedings have risen significantly since the sunset of the Municipal Board. This is largely a result of a difference in funding models between the board and the Office of Administrative Hearings. Each board member received a $50 per diem from the state's general fund while the services of administrative law judges are billed on a fee-for-service basis at $150 per hour. An example of the disparity that results between the two funding structures can be seen in the St. Augusta/St. Cloud proceedings. In this matter, the cost of the administrative law judge was approximately $29,000. The Municipal Board's estimated costs for the same time would have been $1,800.

HIGH COSTS ARE A BARRIER TO PARTICIPATION

Under the Municipal Board funding structure, costs for the decision-makers were paid by the state. Due to recent amendments to Chapter 414, the costs for administrative law judges are now paid for by the parties. Although costs are allocated proportionately among parties, some cities, most townships and property owner petitioners cannot afford these costs in addition to the cost of preparing and presenting their case. In preparing individual cases for hearing, party spending tends to be consistent with the commitment to the desired outcome. This will remain constant regardless which decision-making model is in place.

High costs have prevented private parties and related groups such as homeowner's associations and watershed districts from participating in this level of the process. Even when Chapter 414 allows for an objection from a township, the high cost of hearings impedes a township's ability to contest annexation, and is perceived as a further limitation of rights. One court case has already challenged the fairness of assessing costs to private individuals. In this instance, the court rejected the claim but there is every indication that the issue will continue to resurface until the current funding structure is re-examined.

Collection of hearing costs has become an issue for the Office of Administrative Hearings and may threaten its ability to continue to provide these services for boundary adjustment proceedings.

LEGISLATIVE POLICY FOR CHAPTER 414 NEEDS UPDATING

Establishing a clear statement of legislative policy regarding the relationship between cities and townships is the first step toward a stable environment for municipal growth. Chapter 414 was created to manage and facilitate municipal growth. The legislative policy intent contained in the preamble to Chapter 414 is clear, but is it still current? This is the threshold issue the Legislature must address. Absent this policy direction and commitment, other changes to Chapter 414 will fall short.

INTRODUCTION

In 1997, the Legislature acted to sunset the Minnesota Municipal Board effective, December 31, 1999, transferring its duties to the Office of Strategic and Long-Range Planning.

During the two years prior to the sunset there were clear indications that the arbitration process created to replace the board was unworkable. The timelines and method of selecting arbitrators conflicted with existing statuatory provisions and ignored the reality of multiparty proceedings. Significant legal issues were being raised by legal counsel for both the Municipal Board and for Minnesota Planning. In addition, the cost impact of switching from an appropriation-based model to a fee-for-services model was overlooked. Further confusion was added when the Legislature accelerated the board's sunset by seven months on the last day of the 1999 session. Laws 1999. Ch. 243, Art. 6, sec. 24.

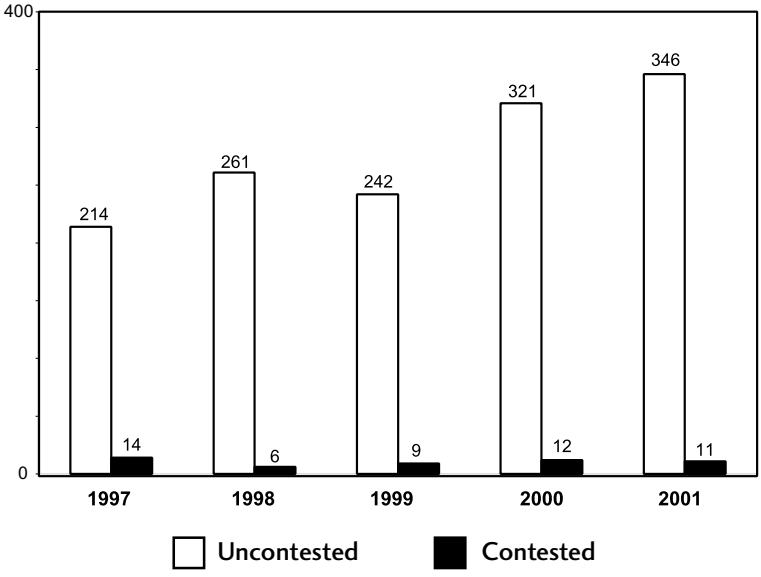
Minnesota Planning sponsored legislation during the 2000 session to address some of the most immediate issues created by the demise of the Municipal Board and by the litigation that followed. The legislation clarified the director's authority and shifted decision-making cost to the parties. Concerned about the future of boundary adjustments statewide, a mandate for a progress report in 2002 was added to the legislation passed in the 2000 session.

SCOPE OF THE REPORT

The legislation mandating this report requires feedback on the effect of the transfer to Minnesota Planning of the authority and duties under Minnesota Statues Chapter 414, as well as a discussion of the successes and failures of resolving boundary disputes. The report must also include the comments and criticisms of individual participants, interested associations representing local governments and administrative law judges that have presided over boundary adjustment proceedings. Laws 2000, Ch. 446, Sec. 2

The report covers the 25 months from the Municipal Board sunset date of June 1, 1999 through June 30, 2001. During this period, there were 691 municipal boundary adjustments throughout the state. Only 22 were filed as contested proceedings, which included 10 that were pending before the Municipal Board at the time of its sunset.

UNCONTESTED AND CONTESTED MUNICIPAL BOUNDARY ADJUSTMENTS IN MINNESOTA



Of the 22 contested proceedings, only 10 went to hearing, including six proceedings involving the St. Augusta and Forest Lake matters. The other 12 contested proceedings were settled prior to hearing in either local discussions or in facilitated mediation.

Parties to the 22 contested proceedings were contacted for their feedback. The process for administering uncontested matters was largely unchanged and parties to these proceedings were not surveyed.

To obtain the responses from parties, including facilitators, mediators and administrative law judges, a feedback survey was developed and sent to each participant after the file was closed. Fifty-eight feedback forms were returned for an approximate response rate of 70 percent.

In addition, Minnesota Planning held a series of focus meetings during the summer of 2001. Associations representing local governments along with representatives of some state agencies were invited to attend. The municipal boundary adjustment staff met with the various interest groups and through a meeting facilitator comments, suggestions and criticisms of the process were collected.

The following organizations sent representatives: League of Minnesota Cities; Coalition of Greater Minnesota Cities; Association of Metropolitan Cities; Minnesota Association of Small Cities; Metropolitan Council; Minnesota Association of Counties; Minnesota Association of Townships; and Local Government Alliance. Several of these associations provided written comments which are included in the appendix section of this report.

The report also includes information on the Municipal Board background and sunset, the boundary adjustment process and recent litigation.

HISTORY

In 1959, Minnesota became the first state to create a quasi-judicial commission, the Minnesota Municipal Board, to hear and decide local incorporation and boundary adjustment questions.

The spectacular post-World War II growth in large urban centers marked a distinct departure from the previous patterns of a predominantly agricultural age. The proliferation of "uneconomic" villages, which often lacked means to furnish their own police and fire protection or adequate sewage disposal facilities, placed additional burdens on counties and surrounding areas. Procedures for incorporation and boundary changes were haphazard, with no public body to provide order or overview. In some cases, statutory authority to annex or detach an area, even with the support of everyone affected, was nonexistent.

The Legislature recognized the need for a coherent policy to guide urban growth not only in the metropolitan area but throughout the entire state. In 1959, on the recommendation of the Commission On Municipal Annexation and Consolidation, Chapter 414 was enacted; it codified all laws on boundary adjustment.

MINNESOTA MUNICIPAL BOARD

In 1959 the commission agreed that the need for administrative review by an impartial agency of the public interest was essential to the success of the new statutory structure, and that the orderly administration of municipal boundary adjustments throughout the state would protect the integrity of land use planning. Accordingly, the Minnesota Municipal Board was created.

The board was charged with conducting hearings and issuing orders for the creation, combination or altering of municipal boundaries. The board's orders extended municipal government to developed areas and areas which are in the process of being developed for intensive residential, commercial, industrial, institutional and governmental purposes or are needed for such purposes.

Just two years after the board was created, a report of the Commission on Municipal Laws to the 1961 Legislature stated:

WHAT THEY HAD TO SAY ABOUT LOCAL SUBDIVISION 16 MEETINGS

"No facilitator, but such an 'independent' would have helped." – *Attorney for petitioner, Oak Grove detachment/St. Francis annexation*

"At each meeting, no action could be taken until the city council met again. This was time-consuming, expensive and inefficient." – *Petitioner, Carlton detachment*

"The meetings reinforced our municipalities working together as well as opening the township's eyes to concerns of the city." –*Township clerk, Carlton detachment*

"… a township has nothing to fight for when all laws are basically for cities." – *Township clerk, Deer River annexation*

"These type of meetings are a waste of time if only two of the four parties involved are willing to look at compromise." – *City administrator, St. Paul Park/Cottage Grove/Grey Cloud Island Township annexations*

"The purpose underlying the philosophy of the law has been accomplished ... We find the establishment of a statewide administrative commission to apply legislative standards in hearing and determining boundary change indispensable to sound public policy in administering the future urban growth in Minnesota. We have found no expert that disagrees."

The board assisted governmental units in addressing the problems and responsibilities that go with development and encouraged communities to work together to reach mutually agreeable solutions at the local level.

The board was composed of three members, appointed by the Governor, staggering six-year terms so that one member was replaced or reappointed every two years. At the time of its sunset, the board was staffed by a full-time executive director, an assistant director and two clerical personnel.

The board convened at least once a month and averaged approximately 120 meetings and hearings a year. In certain proceedings, the local county board of commissioners designated two of its members to temporarily serve as full voting members of the board. For 40 years, board members were paid travel expenses and per diems of $50, and county commissioners were paid a $25 per diem for their services.

SUNSET OF THE MUNICIPAL BOARD

In 1997, the widespread interest in urban sprawl generated legislative action which resulted in passage of the Community-Based Planning Act, a voluntary planning process designed to address the problem of unchecked and uncoordinated development outside of metropolitan areas. Initially there was no mention of the Municipal Board in the Community-Based Planning Act. Shortly before the act worked its way through policy committees a new section was added, devoted entirely to the sunset of the Municipal Board.

In contrast to its creation, the decision to sunset the board was not arrived at after study, analysis or fact-finding by an independent bi-partisan commission.

The Legislature acted to sunset the Municipal Board in 1999 with the following language:

> The municipal board shall terminate on December 31, 1999 and all of its duties under this chapter shall be transferred to the office of strategic and long-range planning according to section 15.039. Laws 1997, Ch. 202, Art. 5 sec. 8.

An optional process for resolving contested boundary disputes was established. The prospective sunset date would allow two years of trial, after which the relative merits of each process could be compared. If the Municipal Board process compared more favorably, there would be time to repeal the sunset legislation.

The replacement process was designed for a two-party case while most contested proceedings involve multiple parties. Further, all parties had to agree in writing to use the process within such a short timeframe before all parties of interest were known. In more than 20 contested proceedings that were filed with the board not a single party requested the alternative process. Therefore, there was no information about the use of the alternative process as a viable method for replacing the board. Significant legal issues were being raised by legal counsel for both the Municipal Board and for Minnesota Planning. In addition, the cost impact of switching from an appropriation based funding model to a fee-for-services funding model was not considered.

The board experienced a rush of cases seeking board action before its sunset. By spring 1999, it became clear that the board could not complete all its cases in time. Frustrated by the lack of legislative attention to the situation, members of the board tendered a

letter of resignation to the Governor, effective July 1, 1999. The Legislature then accelerated the board's sunset by seven months on the last day of the 1999 legislative session. Laws 1999, Ch. 243, Art. 6, sec. 24.

At the time of the sunset, 10 contested cases were pending. The Forest Lake matter had already been scheduled for hearing and the St. Augusta/St. Cloud matter had had a complete hearing before the Municipal Board and was awaiting a decision. There were approximately 40 uncontested proceedings pending as well. In all, almost 90 units of local government were affected.

A ROCKY TRANSITION

The loss of seven months' preparation time made the transistion difficult. However, Minnesota Planning approached this dilemma on two fronts. First, contested case proceedings that had had a full administrative hearing and those cases for which a hearing had been scheduled were transferred by a directive of the Commissioner of Administration, pursuant to Minnesota Statutes section 16B.37, subd. 4, to the Office of Administrative Hearings for judge assignment and scheduling.

Included in this directive were the St. Augusta incorporation proceeding, the two St. Cloud annexation files, the Forest Lake incorporation petition and the two Forest lake annexation proceedings. Immediately, the authority and jurisdiction of the Office of Administrative Hearings to conduct and decide these matters was challenged. See *In Re Frederick W. Knaak vs. State of Minnesota by: David Fisher, Commissioner of the Department of Administration; Kenneth Nickolai, Chief Judge of the Minnesota Office of Administrative Hearings; Dean Barkley, Director of the Office of Strategic and Long Range Planning. #*C7-99-1871 (Minn. App. 1999.)

WHAT THEY HAD TO SAY ABOUT MEDIATION

"Narrowed down the issues of concern for the township." – *City planner, Waconia annexations*

"Mediation was the reason the case ultimately settled." – *Attorney, Mora annexation*

"Parties got away from meaningless 'tangles' and to issues of common interest." – *City administrator, Mora annexation*

"If I had it to do all over, I would skip the mediation and go straight to a hearing." – *Petitioner, Oak Grove detachment/St. Francis annexation*

"The township was satisfied with the outcome of the mediation and with the mediation process itself. I strongly recommend mediation for all annexation disputes." – *Attorney, Hutchinson/Hutchinson Township*

Secondly, Minnesota Planning had begun meeting with associations representing local government, key legislative staff of the House of Representatives and the Senate and various state agencies to reach a consensus on what kind of process might be workable for the remaining and future proceedings filed under Chapter 414. Individual property owner interests were not formally represented.

Procedural guidelines consisting of four steps were developed: optional preplanning meetings initiated by the party proposing the boundary adjustment; petitions that required fact-finding; required mediation; and, arbitration after mediation impasse. This process, however, could not be fully implemented.

The statutory language did not authorize the development of a new process and legal counsel for the agency advised against it. Secondly, even if the development of a new process was deemed to be authorized by statute, many of the provisions were optional with no enforcement authority. That left only the petition process pursuant to Chapter 414, and mediation and arbitration as alternatives to the decision-making historically conducted by the Municipal Board.

In 1999, when the Director of Minnesota Planning first tried to give effect to the "new process" by ordering parties who refused to mediate into arbitration, one of the parties brought legal action against the director and the agency. The party was successful in obtaining an injunction against the agency. *City of Oak Grove, a Minnesota municipal corporation v. Dean Barkley, Director of the State of Minnesota Office of Strategic and Long-Range Planning, City of St. Francis, a municipal corporation, Turtle Moon, Inc., a Minnesota corporation.* #C1-99-10058 (Ramsey Co. Dist. Ct. 1999.)

The court determined that the director did not have the authority to create a new process without changing the statute or promulgating rules. Further, the court stated that where a party chose not to submit to arbitration, the director could not order the party to do so. Arbitration carries a more restrictive right of appeal than the appeal procedures contained in Chapter 414. Accordingly, the director could not force a party to forego more extensive appeal rights without a voluntary waiver of those rights from the party.

During the 2000 legislative session, the director's discretionary authority to require alternative dispute resolution processes was clarified and strengthened. However, a party that does not voluntarily agree to participate in that process will not be ordered to arbitration. Pending further development of the boundary adjustment process post-Municipal Board, the agency was also granted an exemption from rule making until May 2002.

PROCESS OVERVIEW

The procedures for adjusting municipal boundaries under Minnesota Statutes Chapter 414 were, for the most part, left intact following the sunset of the Minnesota Municipal Board. The sunset had the greatest impact on the contested hearing procedures of Chapter 414 which affect the smallest percentage of total proceedings processed by municipal boundary adjustment staff at Minnesota Planning.

Chapter 414 procedures for hearings are still in place, only with different decision-makers. The Director of Minnesota Planning inherited all of the Municipal Board's decision-making authority and is the only decision-maker for proceedings that are uncontested. In addition, parties have the option to use a single arbitrator to decide the matter or a panel of three arbitrators. Neither arbitration process has ever been used.

For hearing or contested proceedings, the Director of Minnesota Planning has expanded authority to invoke alternative dispute resolution processes, which include mediation and arbitration instead of Chapter 414 procedures or in addition to those procedures, Minn. Stat. Sec. 414.12 subd.1. The director also has the authority to delegate the hearing and final decision-making to the Office of Administrative Hearings.

STATUATORY SECTIONS

Chapter 414 sets out procedures for nine different ways to adjust a municipal boundary:

414.02 **Municipal Incorporation:** Can be initiated by a resolution of the town board or

by a petition of 100 or more property owners. The statue mandates an administrative hearing on the question regardless of whether there is opposition, and sets forth evidentiary factors that must be considered by the decision-maker.

414.031 **Annexation of Unincorporated Property by Board Order:** Can be initiated by a resolution of the annexing municipality; a resolution of the township; a petition of 20 percent of the property owners or 100 property owners, whichever is less; or by a joint resolution of the city and the town. The statute mandates an administrative hearing on the issue and sets forth evidentiary factors that must be considered by the decision-maker.

414.0325 **Orderly Annexations Within a Designated Area:** One or more townships and one or more municipalities, by joint resolution, may designate an unincorporated area as in need of orderly annexation. Thereafter, any signatory or the director may initiate annexation of any part of the area designated. These annexations still require a hearing unless the joint resolution designating an area provides for conditions for annexation and states that the director may review and comment but shall order the annexation within 30 days.

414.033 **Annexations by Ordinance:** Provides for six different ways for a municipal council to declare unincorporated land annexed by ordinance. No annexation by ordinance is effective until approved by the director. Two of the six methods for ordinance annexation allow a 90-day objection period for the township. If objections are raised during that time, the file must go forward for an administrative hearing before final decision.

414.0335 **Ordered Governmental Service Extension: Annexation By Ordinance:** An order by the Pollution Control Agency pursuant to Minnesota Statutes section 115.49 or similar statute triggers annexation by ordinance, regardless of the acreage involved, and bypasses the requirement to consider the 414.031 statutory factors required by an administrative hearing. Municipalities may opt to annex property by ordinance instead of extending services by contract. The director may review and comment but shall approve the ordinance within 30 days. This section was added in 1997, and has never been used.

DECISIONS AND FILES OPENED

DECISIONS	96	97	98	99	00	01
Contested Annexations	4	5	4	7	6	9
Orderly Annexations	84	92	102	115	140	148
Detachments/Concurrent Detachments/Annexations	12	13	9	6	4	16
Incorporations	1	2	2	0	2	0
Consolidations	0	3	0	1	1	0
Annexations by Ordinance Approved	132	114	150	122	179	184
Total Decisions	**233**	**229**	**267**	**251**	**332**	**357**

FILES OPENED	96	97	98	99	00	01
Annexations	143	125	167	142	201	179
Orderly Annexations	77	95	104	115	140	146
Detachments	11	10	11	6	5	15
Detachments/Annexations	12	13	9	6	4	16
Incorporations	1	2	1	2	0	0
Consolidations	3	1	0	0	0	0
Total Files Opened	**235**	**233**	**283**	**265**	**346**	**340**

Note: The number of decisions and the number of files opened are not the same because some proceedings are carried from one year into another and files are closed or withdrawn before final disposition.

Years represented are fiscal years. The Minnesota Municipal Board sunset was effective June 1, 1999.

414.041 **Consolidation of Municipalities:** Allows two or more abutting municipalities to consolidate. May be initiated by a resolution of each municipality involved, the director or by resident owner petition. Provides for a local consolidation commission and a chair to be appointed. The commission has up to two years to study the question of consolidation and must report a recommendation back to the director. After an administrative hearing on the report and recommendation, any order is not final unless approved by a majority vote of each municipality involved and a majority vote of the residents of each community.

414.051 **Review of Townships According to Population:** After each federal census, the director may make recommendations to any township with a population that exceeds 2,000. (This section used to provide for a hearing on the question of incorporation of a town with a population that exceeded 2,000.)

414.06 **Detachment of Property From a Municipality:** Property within a city that abuts the municipal boundary and is rural in character and not developed for residential, commercial or industrial uses may be detached. The process can be initiated by a resolution of the municipality or by property owners. (All property owners if the area is less than 40 acres; 75 percent of owners is the area is more than 40 acres.) No hearing is necessary if both a municipal resolution and a petition by all the property owners is received.

414.061 **Concurrent Detachment and Annexation of Incorporated Land:** Property of one municipality which abuts another may be concurrently detached and annexed by joint resolution of both municipalities. Property owners may initiate the process by a petition signed by all the owners together with a resolution of one of the municipalities. An administrative hearing is required if only one city supports the action.

412.091 **Dissolution:** A percentage of voters may petition for a special election on the question of dissolving a city. A hearing is conducted in accordance with section 414.09 prior to the election. Disposition of the land to appropriate townships occurs after an election on the question.

PROCEDURES

Boundary adjustments that require a hearing by statute, or where the right to object is exercised, thereby triggering a hearing, are processed as contested proceedings. Boundary adjustments that are accomplished by ordinance, joint resolutions or by township waiver are processed as uncontested or administrative proceedings. For all docketed files, initiating documents are received and collected according to the statutory requirements. The boundary adjustment staff completes file work-up. Property descriptions are checked for legal compliance and currently reviewed by the Cartographic Unit at the Minnesota Department of Transportation. Any legal or procedural issues are addressed at this point.

Uncontested proceedings: Includes any proposed boundary adjustment filed under a section of Minnesota Statutes Chapter 414 that does not provide for a hearing, or where the right to object has been waived, or where a hearing is not necessary due to a joint filing as provided for by law. The director reviews and approves uncontested proceedings monthly or bimonthly as needed, depending on the volume of petitions received. Expedited review is available when requested for good cause.

Contested proceedings: Includes proposed boundary adjustments filed under any section of Minnesota Statutes Chapter 414 that requires a hearing, or where a hearing is required upon the receipt of a timely objection as provided for by law. A hearing date is scheduled within 30 to 60 days after

receipt of initiating documents filed. Minn. Stat. Sec. 414.09 Subd. 1.

Parties may notify Minnesota Planning in writing of intent to invoke mediation and binding arbitration within 30 days of an initiating document or a timely objection. Minn. Stat. Sec. 572A. 015. (Note: This option has been available since May 1997; it has never been used.) If this option is not exercised, then:

■ **Local meetings, subdivision 16.** The director reviews the file and considers invoking either Minnesota Statutes section 414.01 subd. 16, which requires parties to meet locally at least three times during a 60-day period and report back to the director the results of those meetings or mediation. Extensions of this time period may be obtained, at the discretion of the director if circumstances warrant. The Municipal Board had frequently used this section of the statute.

■ **Mediation.** The director could invoke mediation at the beginning of a proceeding, or after Minnesota Statutes section 414.01 subd. 16 meetings prove unsuccessful. If mediation is invoked, the parties have input as to the kind of mediation process chosen. Mediation options include: parties choose their own mediator; a mediator assigned by the Office of Dispute Resolution working with the boundary adjustment staff; or the parties could contract for mediation services provided by the Office of Administrative Hearings.

If parties disagree on preference of mediation, the file is sent to the Office of Dispute Resolution for assignment.

■ **Hearing.** The director may send a file directly to hearing at any time, either at the beginning of a proceeding, or after unsuccessful local meetings or mediation. Again, the parties have input as to which decision-making path they prefer, including arbitration or an administrative hearing pursuant to Chapter 414. If the parties disagree on type of hearing, the director or designee will either conduct the hearing, or the matter will be delegated to the Office of Administrative Hearings for assignment of an administrative law judge.

■ **Decisions.** Decisions are no longer made in public. The director, administrative law judges and arbitrators, as individual decision-makers, are not subject to the open meeting law. All hearing processes are still open to the public but the deliberation, or act of deciding a case, is no longer required to be done at a public meeting.

FEEDBACK ON MEDIATION

■ Overall, mediation as an addition to the boundary adjustment process is a welcomed option for local resolution prior to going to hearing.

■ Written comments from professional associations are united in their acceptance and support of mandated local discussions authorized under Minnesota Statutes Section 414.01 subd. 16, and mediation as a tool to resolve contested boundary proceedings at the local level.

■ Mediation was unsuccessful in some cases where the parties had become entrenched in their respective positions. In these cases, mediators thought their involvement came too late.

■ Most mediators thought mediation was worthwhile and focused the issues.

■ Where parties are motivated to resolve the issues, mediation has been successful. But, as one mediator pointed out, mediation is a compromise and may not produce the best result.

MEDIATORS ON MEDIATION

"The attitude of the parties was congenial and cooperative. Notwithstanding this, there were obvious differences and lines had been drawn prior to the mediation beginning." – *Mediator, St. Paul Park/Cottage Grove/Grey Cloud Island Township annexations*

"Because the decision resulted only from the compromise of these particular parties, there can be no assurance that it was a 'just' result, nor that it was consistent with other similar cases statewide or with state plans and policies for adjustment of municipal boundaries." – *Mediator, Dundas detachment and Mora annexation*

"In my opinion, the status of this case illustrates another shortcoming of the current boundary adjustment process. As a mediator, not only am I powerless to impose a solution to the dispute, but I am also powerless to enforce any apparent agreement, or to move the parties quickly along any schedule or timetable. I can only advise and encourage the parties to be responsible and cooperative with one another. However, with no oversight, enforcement, or quasi-judicial authority, I can do nothing to prevent a party from impeding or preventing final resolution of the dispute." – *Mediator, Hutchinson annexation*

"Some never intended to submit [the merger issue] to voters." – *Facilitator, Forest Lake/Forest Lake township annexation/incorporation*

Uncontested proceedings are decided at a staff meeting after review by the director. Contested proceedings have been decided in private by the presiding decision-maker, whether it be the director, administrative law judge or arbitrator.

Written approvals or orders are then issued and served on all involved parties and designated recipients.

■ **Appeal.** There is a right of appeal following either of the available hearing options. However, depending upon the kind of hearing, the right of appeal differs markedly.

In an appeal from an arbitration under Chapter 572, the grounds for appeal are limited to challenging actions of the arbitrator or the absence of an arbitration agreement, and therefore, the jurisdictional authority of the arbitrator. Minn. Stat. Sec. 572.19. This is a limited scope of appeal. The underlying evidence upon which the decision is based is not available for challenge in this kind of appeal.

Appeals from an administrative hearing conducted under Chapter 414 may challenge the underlying merits of the decision. Minn. Stat. Sec. 414.07. The scope of this appeal is very broad. Not only can the result or decision itself be challenged, various aspects of the evidence, as well as the jurisdiction of the decision-make, may be challenged on appeal. Parties prefer the hearing procedures of Chapter 414, in part because of its broad scope of appeal.

FEEDBACK ON CONTESTED PROCEEDINGS

The feedback survey results focus on 14 contested proceedings involving 21 files. For some of these proceedings, more than one petition involving the same area was filed.

These proceedings were consolidated for the convenience of the parties.

Five proceedings were resolved by the parties themselves in mandated discussions at the local level, or the "subdivision 16" phase of the process. Minnesota Statutes section 414.01 subd. 16 provides that the director may require the parties to meet during a 60-day period and report back the results of those meetings. This statutory section has been available to parties for quite some time and was used by the Municipal Board with equal success. Prior to a 1996 board amendment, these discussions could only be invoked after a hearing had been convened and when the possibility of settlement presented itself.

Another five proceedings were settled in mediation and the remaining four went to an evidentiary hearing, conducted by an administrative law judge. Three of the four proceedings that went to hearing were contested and had multiple parties. The fourth proceeding was uncontested but filed under Minnesota Statutes Section 414.031, which automatically requires a hearing. That petition sought to annex land in an unorganized area of the state. Although several property owners appeared at the hearing and spoke against the annexation, there was no politically organized township to oppose the petition.

The level of satisfaction with the process dwindled the further into the process the parties went, and the more significant the costs to the parties. Most dissatisfaction came from parties that participated in a hearing and did not prevail.

The Dundas, Waconia, Mora, Oak Grove and Hutchinson proceedings were resolved through the use of mediation. Parties to these proceedings also participated in mandated local discussion pursuant to Minnesota Statutes Section 414.01 subd. 16. Parties' responses were mixed on the usefulness of local discussions but 93 percent thought mediation was useful.

Relationships of the parties involved, and more importantly, past history between the parties involved, play a significant role in the success or acceptance of a process. For example, the Forest Lake proceeding was sent to hearing after mandated local discussions broke down. The parties responding to the feedback survey from the Forest Lake proceedings, including the facilitator selected by those parties, were unanimous in the opinion that the local discussion step was not helpful.

Of the four proceedings that went to hearing, only the Cottage Grove/St. Paul Park/Grey Cloud Island matters went through both the local discussions and mediation prior to hearing. In these proceedings, the responding

WHAT THEY HAD TO SAY ABOUT RULES AND APPEALS

"Clarify that the rules of the Office of Administrative Hearings apply, not those of the former Municipal Board, to matters heard by the office and that appeals are to be taken under the administrative procedures act."
– Chief Administrative Law Judge, St. Cloud annexations/ St. Augusta incorporation

"The two-step appeal process, first to district court and then to the Court of Appeals, is redundant and expensive for the parties. In general, district courts aren't reviewing courts. It may be more appropriate to amend the statute for review by the Court of Appeals without district court involvement." *– Administrative Law Judge, St. Paul Park/ Cottage Grove/Grey Cloud Island Township annexations*

WHAT THEY HAD TO SAY ABOUT THE HEARING, DECISION AND APPEAL

"This has become an emotional issue for the community." – *Attorney for petitioners, Forest Lake annexation/ incorporation*

"The future of the township form of government is at risk." – *Township supervisor, Forest Lake annexations/ incorporation*

"The law should allow for vote of affected citizens in proposed annex[ation] area and its immediate neighbors." – *Town board member, St. Paul Park/Cottage Grove/Grey Cloud Island township annexations*

"The decision was one that appeared to be based on political healing as opposed to a decision based on statutory criteria." – *City attorney, St. Cloud annexations/ St. Augusta incorporation*

"The process worked well. Don't change." – *City administrator, Baxter/Brainerd annexations*

parties favored local discussions two to one, but reversed on the value of mediation with only one party responding favorably.

Five of six mediators responded positively when asked if the parties meaningfully participated in mediation. Only four mediators responded positively when asked if parties were motivated to resolve their differences. Where the mediator thought that parties were not motivated to resolve their differences, the case went on to hearing.

MEDIATORS RECEIVE HIGH MARKS

Regardless of the response to the value or usefulness of mediation, parties gave mediators high marks, describing them as excellent, professional, top-notch, effective, deliberate, compassionate, neutral, fair, even-handed, straightforward, and honest, with a good grasp of the issues. Of the seven matters that were assigned to mediation, former Municipal Board members have been selected as mediators in the majority of cases. The most sought-after mediator was the former chair of the Municipal Board.

ADMINISTRATIVE HEARINGS

Administrative law judges, from the Office of Administrative Hearings, conducted four contested case proceedings during the timeframe of this report. The St. Augusta/St. Cloud and the Forest Lake proceedings were transferred to that office by the Commissioner of Administration. The Brainerd matter was delegated to that office by the Director of Minnesota Planning following the legislative amendments to Chapter 414, which allowed a direct delegation. The parties to the Cottage Grove/St. Paul Park/Grey Cloud Island Township matter were asked to select between arbitration or administrative hearing conducted by an administrative law judge. All parties selected the administrative law judge.

There is as much disagreement as to who should make the final decision in contested boundary disputes as there is agreement on the addition of mediation to the process.

DIVERGENT VIEWS

Feedback for information regarding hearings is limited with only four proceedings. Generally, parties who prevail at the hearing level are satisfied with the process, and parties who do not prevail are dissatisfied. Local government associations are divided on the question of who should make the final decision in these matters.

Comments submitted by the representative associations can be found in the appendix. They highlight divergent viewpoints on the current hearing process:

■ The Coalition of Greater Minnesota Cities unequivocally supports the administrative law judge decision-making model. The coalition believes that administrative law judges are professional, neutral judges making fair and unbiased decisions.

■ The Minnesota Association of Townships and the Local Government Alliance unequivocally oppose the administrative law judge decision-making model. The association and the alliance believe that administrative law judges are not trained or experienced in municipal issues, and their lack of knowledge of local concerns results in a process that is not fair to townships.

Of the total number of boundary adjustments filed with Municipal Boundary Adjustments, about three percent are contested. Of this percentage, only a handful actually go to a hearing. The cases that proceed to a hearing for final decision become high-profile, costly and hotly contested disputes. This was true under the Municipal Board as well, and is not likely to change regardless of the decision-making model.

COST ANALYSIS

Under the former Municipal Board structure, parties to proceedings were responsible only for their own costs incurred throughout the process. A frequent criticism of the former process was often the great expense for communities that participated in contested case proceedings before the board. In fact, until 2000, a year after the board sunset, there was nothing in Chapter 414 that required parties to spend any money or be represented by legal counsel. The only financial investment required by law was a filing fee based on the number of acres involved in a proceeding.

Considering what was at stake, however — increased tax base, development opportunities, retirement funding — parties often spent great sums of money to advance their case and still do. However, whatever costs were incurred were directly the result of the individual choices made by the parties as to how their resources were allocated. The state paid for the decision-makers.

The Municipal Board was a volunteer board whose members were reimbursed per diem from a direct appropriation from the state's general operating fund. In 1959, when the

WHAT THEY HAD TO SAY ABOUT COST

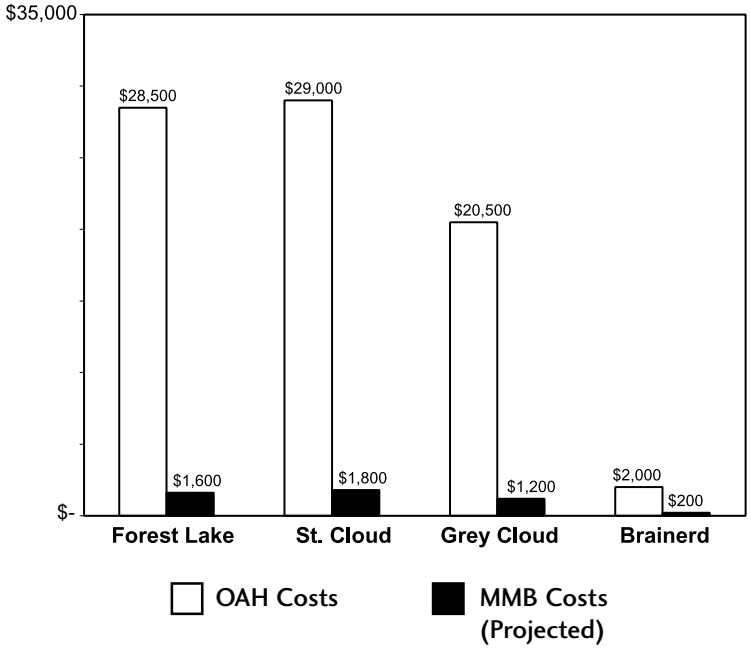
"The present process may encourage settlement of some cases that should be settled rather than go to hearing, but it also encourages settlement of many cases that should be contested solely due to the cost of the proceeding." – *Attorney, Mora annexation*

"In view of the present law, and the cost of a hearing and the administrative law judge (one person) would make the decision, we went with the best we could." – *Township clerk, Mora annexation*

"The present system of cost allocation is punitive and may intimidate a party to foregoing their right to contest." – *Attorney, St. Paul Park/Cottage Grove/Grey Cloud Island Township annexations*

"Parties and state should share cost of the hearing process." – *Administrative Law Judge, Forest Lake/Forest Lake Township annexations/incorporation*

COST COMPARISON



MMB costs were figured using a per diem of $50 per day times three board members and $25 times two county commissioners times the number of days of the Office Administrative Hearings hearing. The OAH costs are the figures actually billed by that office to the parties.

Municipal Board was created, its per diem was set at $50 per day. County commissioners who were appointed to serve with the board were reimbursed a per diem of $25. Whether a meeting lasted one hour or 10 hours, the $50 and $25 per diem rate applied. Administrative hearings conducted by the Municipal Board rarely exceeded three days.

For Fiscal Year 1998, total costs of the board, appointed county commissioners, staff and court reporters totaled about $15,000. For six contested proceedings in fiscal year 1999, costs were about $18,500.

When the board was sunset, the assumption was that most contested proceedings, if not all, would be decided by an arbitration process. Funding for that process would be established by an arbitration agreement executed by the parties. However, as the board sunset approached, the evidence mounted that parties were rejecting arbitration as a suitable process for resolving boundary disputes.

Many issues were left unresolved when the board sunset, including the issue of funding. Left without a workable process and contested cases requiring immediate action, the Commissioner of Administration transferred several contested case proceedings to the Office of Administrative Hearings. This transfer shifted the cost of these proceedings from a direct appropriation model to the fee-for-services model of the Office of Administrative Hearings. This meant that fees were calculated at the then hourly rate of $91, a dramatic increase from the $50 a day per diem per member of the Municipal Board. OAH fees increased to $150 per hour effective July 1, 2001.

As the first price tags for contested proceedings under this model began to emerge, it was clear that neither the appropriation for the Municipal Board, which Minnesota Planning had inherited, nor Minnesota Planning's budget could accommodate these costs. It was also clear that the funding structure of the Office of Administrative Hearings would be strained in short order. The Legislature resolved this dilemma by shifting the financial burden for contested proceedings from the state to the parties during the 2000 legislative session. And now, parties pay for all hearing and pre-hearing costs, including mediation.

MEDIATION COSTS

Mediation costs have averaged between $2,000 and $4,000 per proceeding. These costs are allocated on a percentage liability basis before the mediation begins, according to a mediation agreement reached by all parties and the selected or assigned mediator. Parties, for the most part, have embraced

mediation as a process and therefore have not been inclined to complain about these costs. Consequently, collection of these fees has not become an issue.

Any costs arising out of the mediation are paid directly to the mediator by the parties involved, on a pre-determined basis. By agreement with Minnesota Planning the mediators are limited to an hourly rate of $150. Other expenses are covered by arrangement with the parties and typically include preparation, long distance phone charges, copy charges, lodging (if necessary), mileage and word processing.

During the timeframe of this report, six boundary adjustments participated in mediation and incurred the following costs:

Dundas: $4,000, split equally between city of Dundas and petitioner.

Waconia: $2,940, split about 55-45 between city and town of Waconia.

Oak Grove: $3,150, split equally between Oak Grove, St. Francis and petitioner. This mediation was handled through the Attorney General's Office, not Minnesota Planning.

Mora: $3,150, split equally between the city of Mora and town of Arthur.

Hutchinson: $3,600, split between city and town of Hutchinson and petitioners.

Grey Cloud: $1,950, split equally between St. Paul Park, Cottage Grove, town of Grey Cloud Island and petitioner.

Note: Some numbers were rounded slightly.

ADMINISTRATIVE HEARING COSTS

The costs of conducting contested boundary adjustment hearings are considerably higher than anyone expected given the previous funding model. Even though these costs more closely resemble the cost of litigating similar proceedings through the court system, they are considered by some to be a deterrent to proposing or opposing annexation. And, in fact, they are seen as a barrier to participating in the process by individual landowners and some townships. And for these hearings, the question of collection is still very much an issue.

These concerns are echoed in the written comments submitted by Chief Administrative Law Judge Kenneth Nickolai, wherein the issue of fairness, the perception of agency influence over a decision-maker and the chronic collection problem are identified. See Nickolai letter dated Sept. 17, 2001 in Appendix. In the first lawsuit filed since costs were authorized to be assessed directly to the parties, the petitioner, a private property owner, challenged the assessment of costs against an individual private party in *In Re: Application For Review of Order Allocating Costs In Re The Petition For Municipal Boundary Adjustments*. #C7-00-006264 (Wash. Co. Dist. Ct. 2000). After briefing and hearing, petitioner's motion was denied. Although the District Court rejected the petitioner's arguments in this case, the issue is likely to be raised again.

For proceedings prior to the 2000 legislation, but after June 1, 1999, parties have either negotiated reduced fees or received legislative dispensations from payment.

Administrative hearings are required for proceedings that are not resolved in either local discussions or mediation, or are filed under a section of Chapter 414 that requires a hearing prior to decision. There have been five administrative hearings conducted since the

Municipal Board sunset. Four of these proceedings have been conducted by the Office of Administrative Hearings. The fifth hearing was conducted by boundary adjustment staff at Minnesota Planning following a consolidation study report.

The Forest Lake and the St. Augusta/St. Cloud matters were pending before the Municipal Board at the time of its sunset and were transferred by administrative directive to the Office of Administrative Hearings. Since the sunset, the Cottage Grove/St. Paul Park/Grey Cloud Island matters, also consolidated for purposes of hearing, and the Brainerd proceedings comprise the four hearings conducted by administrative law judges.

Cost of boundary adjustment increases dramatically at the hearing level. Individual costs for the parties include witness and expert witness costs, court reporter, transcript fees, exhibit preparation, and, of course, attorney's fees. And now, parties must also pay the cost of the decision-maker.

Some costs incurred by the parties involved in the four hearings conducted by administrative law judges:

Forest Lake. Costs for the administrative law judge hearing in this matter were $28,490 (not charged to parties as per Laws 2000; Chapter 446, subd. 2, which limited costs to what the Municipal Board would have charged if the board had heard and decided the case). $14,000 was paid by Minnesota Planning to the Office of Adminstrative Hearings.

St. Cloud. Costs for the administrative law judge hearing were $29,090, and billed to parties in this proceeding per Laws 2000; Chapter 446, subd. 2. The parties balked at paying and eventually a negotiated agreement among the parties resulted in the following payments: St. Augusta paid $5,000; St. Cloud paid $15,000; Schilpin, independent petitioner, paid $0; RHC Partners, independent petitioner, paid $0; and Minnesota Planning paid $9,090.

Cottage Grove/St. Paul Park/Grey Cloud Island. This was the first hearing in which a prehearing allocation by the Chief Administrative Law Judge resulted in a 40-40-10-10 percent liability appointment. Costs for the administrative law judge hearing were $20,500: petitioner paid $8,200; township paid $8,200; Cottage Grove paid $2,050; and St. Paul Park paid $2,050.

Brainerd. Costs for the administrative law judge hearing were $2,000. This proceeding was uncontested but required an administrative hearing by statute.

These administrative law judge hearing costs were at the 1999 and 2000 rates of $91 per hour. The Office of Administrative Hearings rates have increased to $150 per hour. The cost of a hearing similar to the Cottage Grove/St. Paul Park/Grey Cloud Island hearing will increase from $20,500 to $33,800, and an uncontested hearing similar to the Brainerd proceeding will increase from $2,000 to $3,000.

CONCLUSION

Based on the research and feedback analysis contained in the report, it is clear that the current process for adjusting municipal boundaries is working just as well as when it was administered by the Municipal Board. With the exception of costs, there is little statistical difference between the previous process and the current one. The vast majority of proceedings are uncontested and the number of contested proceedings remains extremely low. This is not so much a reflection of the process as it is of the statutory construction of Chapter 414.

Mediation is generally accepted as a positive addition to the boundary adjustment process. Arbitration, however, is not. Although there

are two different methods of arbitration available for parties, neither has been used. The clear preference of parties is to have boundary adjustment disputes decided in an administrative hearing conducted pursuant to the criteria and provisions of Chapter 414. Over the years, parties and interested stakeholders have disagreed as to what model for final decision-making is appropriate.

Currently, legislative authority to decide contested boundary proceedings lies with the Director of Minnesota Planning. Because of the many service programs for local governments within Minnesota Planning, the necessity to remain neutral dictates that the director exercise the authority to delegate contested proceedings outside of the agency. Given the parties' rejection of arbitration as a viable substitute for the Municipal Board, the only current statutory option is delegation to the Office of Administrative Hearings.

Perceptually, this has resulted in a division of support among interested stakeholders and participants. Additionally, the steep rise in hearing costs is becoming a real barrier to participation in the preferred hearing process. Until the Legislature addresses the threshold issue of legislative policy for Chapter 414 and the funding structure, the success of the current process may only be temporary.

APPENDIX

MUNICIPALITIES – ALTERNATIVE DISPUTE RESOLUTION

AN ACT relating to municipalities; clarifying the use of alternative dispute resolution in certain proceedings; requiring a report to the legislature; exempting the office of strategic and long-range planning from adopting rules until a certain date; providing instructions to the revisor of statutes; amending Minnesota Statutes 1999 Supplement, section 414.12; repealing Minnesota Statutes 1998, section 414.10.

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

Section 1. Minnesota Statutes 1999 Supplement, section 414.12 is amended to read:

414.12 DIRECTOR'S POWERS

Subdivision 1. ALTERNATIVE DISPUTE RESOLUTION. Notwithstanding anything to the contrary in sections 414.01 to 414.11, the director of the office of strategic and long-range planning, upon consultation with affected parties and considering the procedures and principles established in sections 414.01 to 414.11, and Laws 1997, chapter 202, article 4, sections 1 to 13, may require that disputes over proposed boundary adjustments be resolved by means of alternative dispute resolution processes in place of hearings that would otherwise be required pursuant sections 414.01 to 414.09, including those provided in chapter 14, in the execution of the office's duties under this chapter. Alternative dispute resolution processes that may be required include:

(1) the contested case procedures provided by sections 14.57 to 14.62;
(2) the mediation and arbitration process provided by section 572A.03; or
(3) another mediation and arbitration process ordered by the director.

Subd.2. DELEGATION OF AUTHORITY. The director may, with the agreement of the chief administrative law judge, delegate to the office of administrative hearings, in any individual case or group of cases, the director's authority and responsibility to conduct hearings and issue final orders under sections 414.01 to 414.09.

Subd. 3. COST OF PROCEEDINGS. The parties to any matter directed to alternative dispute resolution under subdivision 1 or delegated to the office of administrative hearings under subdivision 2 must pay the costs of the alternative dispute resolution process or hearing in the proportions that they agree to. Notwithstanding section 14.53 or other law, the office of strategic and long range planning is not liable for the costs. If the parties do not agree to a division of the costs before the commencement of mediation, arbitration, or hearing, the costs must be allocated on an equitable basis by the mediator, arbitrator, or chief administrative law judge. The chief administrative law judge may contract with the parties to a matter directed or delegated to the office of administrative hearings under subdivisions 1 and 2 for the purpose of providing administrative law judges and reporters for an administrative proceeding or alternative dispute resolution. The chief administrative law judge shall assess the cost of services rendered as provided by section 14.53.

Subd. 4 PARTIES. In this section, "party" means:

(1) a property owner, group of property owners, municipality, or township that files an initiating document or timely objection under this chapter;
(2) the municipality or township within which the subject area is located;
(3) a municipality abutting the subject area; and
(4) any other person, group of persons, or governmental agency residing in, owning property in, or exercising jurisdiction over the subject area that files with the director a notice of appearance within 14 days of publication of the notice required by section 414.09.

Sec. 2.. REPORT TO THE LEGISLATURE; RULES EXEMPTION..

The director of the office of strategic and long-range planning must report to the senate committee on local and metropolitan government and the house of representatives committee on local government and metropolitan affairs by February 1, 2002, on the effect of the transfer to the office of authority and duties under Minnesota Statutes, chapter 414. The report must describe the successes and failures of the processes in resolving disputes and include the comments, suggestions, and criticisms of the processes from local governments that have participated in the processes, interested associations representing local governments, administrative law judges that have presided over boundary adjustment matter, and the office of administrative hearing. The office of strategic and long-range planning is exempt from any requirement to adopt or amend rules governing boundary adjustment procedures until after May 1, 2002.

Sec.3 REVISOR INSTRUCTION.

The revisor of statutes is directed to prepare legislation for the 2001 legislative session that makes changes to Minnesota Statutes, chapter 414, to reflect the transfer of powers and duties from the Minnesota municipal board, now abolished, to the office of strategic and long-range planning. In preparing the legislation, the revisor may consult with any interested person. The revisor shall provide the preliminary draft legislation to the chairs of the house local government and metropolitan affairs committee and the senate local and metropolitan government committee.

Sec. 4. REPEALER.

Minnesota Statutes 1998, section 414.10, is repealed.

Sec. 5 EFFECTIVE DATES.

Subdivision 1. PROCEEDINGS. Section 1, subdivisions 1,2,and 4, are effective retroactive to June 1, 1999, and apply to all matters pending on or commenced on or after that date. Sections 2 and 3 are effective the day following final enactment.

Subd. 2. COSTS. Section 1, subdivision 3, is effective retroactive to June 1, 1999, and applies only to boundary adjustment matters commenced on or after June 1, 1999. In any proceeding in which a decision by the Minnesota municipal board prior to June 1, 1999, was enjoined by a court order, the disputing parties are liable for any costs as provided in section 1, subdivision 3, incurred on or after June 1, 1999. For all boundary adjustment matters commenced before June 1, 1999, all costs must be allocated as provided in law and rule prior to the abolition of the Minnesota municipal board, and the maximum total amount the parties may be charged by the office of strategic and long range planning, the office of administrative hearings, or as part of an arbitration is no more than the Minnesota municipal board could have charged if the matter had been heard and decided by the board. Costs that exceed what the municipal board could have charged must be paid by the office of strategic and long-range planning.

Presented to the governor April 25, 2000.

Approved April 26, 2000.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
100 Washington Square, Suite 1700
100 Washington Avenue South
Minneapolis, Minnesota 55401-2138

August 21, 2001

Christine A. Scotillo
Municipal Boundary Adjustments
300 Centennial Office Building
658 Cedar Street
St. Paul, Minnesota 55155

Dear Ms. Scotillo,

Enclosed is my response to your survey about the hearing I conducted in the boundary dispute between the Township of St. Augusta and the City of St. Cloud.

The Office of Administrative Hearings was created by the legislature to provide fair and independent hearings and decisions in disputes involving government. Our obligation under the Code of Judicial Conduct is to make decisions based on the evidence and the applicable law. That is the approach we have taken with the cases you have referred to us. The Minnesota Court of Appeals has reviewed one of the contested municipal decisions issued by this office and has affirmed the Administrative Law Judge's decision.

If, however, the legislature seeks to adopt a decision-making model with more political accountability, it could consider the structure used by the Public Utilities Commission and the Environmental Quality Board. The Governor appoints the members to those decision-making bodies subject to Senate confirmation. Administrative law judges hear contested cases for those agencies and make findings of fact and recommendations. However, the Commission and the Board make the final decision in each case.

I also want to express to you my thanks for your work and the work of your Municipal Boundary Adjustment staff. You are confronted daily with many complex local government issues. I appreciate that you have taken the time to work with staff here at OAH to deal with the wide range of technical questions that have arisen since we began this hearing work.

Sincerely yours,

KENNETH A. NICKOLAI
Chief Administrative Law Judge

Telephone: 612-341-7640

KN:sh

PLEASE PROVIDE .THE INFORMATION REQUESTED BELOW TO THIS OFFICE.

Municipal Boundary Adjustments
300 Centennial Office Building
658 Cedar Street
St. Paul, MN 55155

This form is being completed by Ken Nickolai
the Administrative Law Judge in the boundary adjustment between the Township of St. Augusta and the City of St. Cloud.

PART I - MEDIATION

1. Type of Petition and Municipal Boundary Adjustment file number.

2. Who were the parties involved in the boundary adjustment?

3. Did the parties participate in mediation through the Office of Administrative Hearings?

4. If so, who was the mediator?

5. Was the boundary adjustment settled in mediation? If not, were the issues narrowed? Did the mediator help narrow the issues?

6. Was the mediation process worthwhile or not? Why?

7. Were there any problems with the mediation? If so, what were they?

8. Any other observations, comments, suggestions or criticisms of this part of the process?

PART II- CONTESTED CASE - ADMINISTRATIVE LAW JUDGE

1. If this adjustment was not settled in mediation, was it directed to the Office of Administrative Hearings? How was that determined?
   It was directed to the Office of Administrative Hearings via an Order of the Commissioner of Administration that we perform this work on behalf of Minnesota Planning.

2. How did you get to be assigned to the adjustment?
   Two adjustment matters were referred to our office. As Chief Administrative Law Judge, I assigned the St. Augusta matter to myself and the Forest Lake matter to ALJ George Beck.

3. What was the length of the hearing?
   9 days (January 3 – 13, 2000)

4. How many witnesses were called by each side?
   The file has been returned to Minnesota Planning. The exact number of witnesses and exhibits can be tallied from that file.

5. How many exhibits were introduced by each side?
   See above.

6. Was a court reporter present? Yes.
   How were those costs allocated? The costs were paid by OAH and then billed to the parties.

7. Where was the hearing held? Were there any costs involved and how were they allocated?

   The hearing was held in the Town Hall at St. Augusta.

Costs were billed by OAH to Minnesota Planning. The Order of the Commissioner of Administration directing that OAH do this work included a provision that the Department of Finance would determine payment to OAH from Minnesota Planning. After the hearing was completed, the legislature changed the authorizing legislation and Minnesota Planning sought payment from the parties. They ultimately reached an agreement on how the respective share of the costs each party would bear.

8. Was there a public hearing held? Yes

What was the general consensus of those who attended the hearing?
The majority of the public testimony favored incorporation of the township as a city and opposed annexation.

Was the public hearing helpful or not?
The public hearing was helpful to inform the parties and the judge of the range and intensity of public debate over the merits of the proposal.

9. Did you tour the subject area? Yes.
What were your impressions? Was it helpful in your decision? Why or why not?
The tour was helpful to see first hand the level and types of development in the area proposed for annexation or incorporation. Exhibits and maps are useful, but seeing the subject area first hand is essential for a complete understanding of the issues involved.

10. Were the parties represented by counsel? Yes.
Who were they? Michael Couri, Gordon Hansmeier, Christopher Dietzen, Gerald VonKorff.

11. Did the parties appear prepared and have a grasp of the issues?
Yes

12. Which rules and procedures did you apply at the hearing?
Municipal Board Rules, with reference to OAH rules to fill the gaps.

13. In making your decision did you apply the criteria of chapter 414? Why or why not? Yes. The criteria is the legislative statement of standards.

14. What was your decision based on?
The evidence in the record as applied to the legislatively mandated standards articulated in Chapter 414.

15. Was it appealed? If so, under which statute? What was that decision?
The appeal was withdrawn.

16. What was the cost of the hearing?

17. Would you be willing to hear additional boundary adjustment contested cases?
Yes. The purpose of the Office of Administrative Hearings is to provide to fair hearings and decisions on disputes involving government and the public. As judges under the standards of the Code of Judicial Conduct our responsibility is to make decisions based on the evidence and applicable law.

18. What suggestions do you have to improve the process?
Clarify that the rules of the Office of Administrative Hearings apply, not those of the former Municipal Board, to matters heard by the office and that appeals are to be taken under the administrative procedures act. This

would eliminate the appeal to the district court. Appeals would then be heard directly by the Court of Appeals as in other administrative matters.

19. Do you have any other observations, comments, suggestions or criticisms of the process?

As discussed above, the responsibility of an Administrative Law Judge is to make decisions based on the evidence and applicable law. If the legislature chooses to return to a model of decision-making with more political input, it could look to the decision-making process established for the Public Utilities Commission or the Environmental Quality Board. In those situations, decision-makers appointed by the Governor and confirmed by the Senate review findings of fact and recommendations made by an Administrative Law Judge.

Please feel free to make any additional comments concerning the total process. This information will be used to help compile a report to the Legislature on the effect of the transfer of the municipal boundary adjustment procedure to the Office of Strategic and Long Range Planning.

Thank you for taking the time to complete these questions.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
100 Washington Square, Suite 1700
100 Washington Avenue South
Minneapolis, Minnesota 55401-2138

September 17, 2001

Christine Scotillo, Director
Municipal Boundary Adjustments
Minnesota Planning
300 Centennial Office Building
658 Cedar Street
St. Paul, Minnesota 55155

Re: Minnesota Planning's Report to the Legislature concerning Hearings for Municipal Boundary Adjustments

Dear Ms. Scotillo,

In my earlier letter to you, I neglected to discuss the section of statute that allocates to the parties the costs for conducting municipal boundary adjustment hearings, Minn. Stat. § 414.12, subd. 3.

The new law directs the parties to pay the Office of Administrative Hearings for the costs of the hearing. If the parties are unable to agree on the fair allocation of the costs, the Chief Administrative Law Judge orders an allocation among the parties.

Two problems have developed with the law as written.

First, some parties, including townships and private persons, believe it is unfair that they must pay for a hearing. If these matters were resolved in the district courts, the parties would not pay the cost for the judge's time to hear and decide the matter. In district court, the costs are borne by all Minnesotans through general funding of the judicial branch. In contrast, most administrative hearings conducted by the Office of Administrative Hearings are paid for by the agency with jurisdiction over the matter. Admittedly, this raises concerns about the influence of the agency over the judge, and we would prefer to receive a general fund appropriation in order to avoid this appearance of unfairness. However, ordinarily the party requesting the hearing is not obligated to pay for the judge's time – the agency bears the cost.

Here, the parties must share the costs. Some parties have argued that this arrangement violates the equal protection clause of the state and federal constitutions. While this argument was rejected by Gary R. Schurrer, Judge of District Court,[1] this issue is likely to be raised again in other forums.

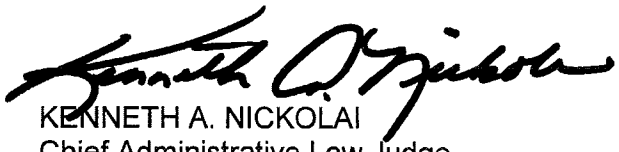
[1] In Re the Petition for Municipal Boundary Adjustment: St. Paul Park/Grey Cloud Island Township (A-6185) and Cottage Grove/Grey Cloud Island Township (A-6186), No. C7-00-6264, Tenth Judicial District, filed August 17, 2001.

The second problem is the practical one of collecting the assessed costs from the parties when they do not pay. In one case, OAH had to enlist assistance from Minnesota Planning and the Department of Finance to collect the costs. In the case mentioned above, the parties have challenged the assessment in district court and some parties have not paid. The costs of collection will raise our rates, and if payment is not received, the shortfall will be borne by all state agencies through rate increases.

Legislation was introduced last session in both houses for a general appropriation to cover some of the costs of state agency and municipal boundary adjustment hearings. I support that legislation. While the legislation did not pass, I anticipate that it will receive further consideration in the future.

I strongly urge you to point out the problems arising from the current requirement to bill the parties for the costs of the municipal boundary adjustment hearings.

Yours truly,



KENNETH A. NICKOLAI
Chief Administrative Law Judge

Telephone: 612-341-7640

KN:sh

MINNESOTA PLANNING
MEETING NOTES
JUNE 19, 2001

CONCERNS and CRITICISMS

1. There was initial uncertainty about what would happen.
2. Don't like sub. 16, although Planning will not know the parties positions/relationships.
3. The townships do not buy in to the new process even though they helped develop the new process.
4. There was difficulty physically locating Municipal Boundary Adjustments (MBA).
5. There is no MBA website or link on Planning's web page.
6. Appeared to be a rough integration into Planning
7. New rules are needed

POSITIVE ELEMENTS and ADVANTAGES

1. Mediators are a neutral third party.
2. The routine cases are handled well.
3. With the ALJ's hearing cases it is a more educated process.
4. With the cost allocation you know up front the price of initiating annexation.
5. Like the addition of mediation and the mediators are good.
6. There is now a consistent procedure.
7. Like the definite steps in process.
8. The perception is that politics are out.
9. There have been well written opinions that are logical.
10. Like the use of professional judges.
11. The whole process just "feels good".
12. The move to Planning was a good thing, seems to be a good fiting.
13. Still want to have arbitration available, even though no one has used it.

Facilitated by Minnesota Planning
Barbara Ronningen, facilitator

11-08-01

MINNESOTA PLANNING
MEETING NOTES
JULY 24, 2001

CONCERNS and CRITICISMS

1. Inconsistent application of the process
2. People are not involved, and we want to get them involved locally
3. High cost of dispute resolution
4. There is a broad range of issues to consider in coming to a decision
5. Townships and municipalities should be treated equally in the eyes of the law
6. The statue is currently biased in favor of annexation because of the process
7. It must be stated that cities need to be involved in local mediation (The ALJ process was not part of the initial legislative agreement)
8. Arbitration is bad because there is no appeal
9. ALJs do not have sufficient experience with municipal issues (benefiting parties should pay the costs)
10. There is no justification for a township to pay an ALJ
11. The relationship between MMB rules and ALJ rules is unclear
12. Chapter 414 policy issues are not well suited for ALJ decisions
13. Public opinion is not a statutory factor
14. ALJs are metro-based (do not represent rural perspectives well)
15. ALJ process creates an adversarial context both going in and coming out
16. The 2000 Legislation has increased public expenses (has gone backwards)
    A. ALJ expenses
    B. Longer hearings
    C. Need to spend more time and money on experts
17. Current process contains barriers to alternative processes (for example, cap taxes, limit public input, new elections)
18. Higher monetary burden on townships
19. The authority of the State Director of Planning is too centralized (*note*: The Director of Planning needs to be present at meetings like this one)
20. The predictability of a sound statutory process is missing
21. There is no longer a direct connection to knowledgeable staff (so the institutional memory is unavailable)
22. 031 factors are not considered in ordinance annexations

SUGGESTIONS

1. Need more background information so that whoever is mediating or hearing the annexation understands both the larger context and the particular issue
2. Move to more joint planning without concerns about "which jurisdiction"
3. Early disclosure
4. Better rules for disclosure and discovery
5. Anticipate future growth needs in plans
6. Change the process to move the controversy down to the people instead of up to an authority figure for a decision (make final decisions at local level)
7. Allow more options in mutually negotiated agreements
8. Make negotiated agreements enforceable
9. Educate township and city officials and attorneys in mediation alternatives
10. Look for ADR training devices
11. Request State Planning to collect data on mediated outcomes (especially cost data for use by all involved)
12. Require a penalty be paid by those who do not mediate in good faith

13. Tie annexation to timely delivery of services (subject to reversal)
14. Request State Planning to collect data about which mediators did what and define level of success
15. Amend the statutes to eliminate ALJs as part of the process
16. Public comment should be considered as in a rule making process

POSITIVE ELEMENTS and ADVANTAGES

1. Parties who have used mediation have been satisfied with the process
2. Some parts of the state are not at war over annexation; it is working well and they are using alternatives
3. A recent Minnesota Planning presentation on annexation by boundary adjustment staff demonstrated institutional memory, ability, and neutrality; (staff is still available to the State as a resource)

Facilitated by the Management Analysis Division
Minnesota Department of Administration
Georgie Peterson, facilitator

These materials are available in Braille, audiotape, or large print
From Harriet Rydel at 651-297-1148 or TTY 800-627-3529

MINNESOTA ASSOCIATION OF TOWNSHIPS

Edgewood Professional Building
805 Central Avenue East, P.O. Box 267
St. Michael, Minnesota 55376
Phone: (763) 497-2330 or MN WATS 1-800-228-0296
Fax: (763) 497-3361
E-mail: mntownships@usinternet.com

Executive Director:
David Fricke

Administrative Assistant
Jean M. Woorster

Attorneys:
John Dooley
Kent Sulem

August 31, 2001

Ms. Christine Scotillo, Director
Municipal Boundary Adjustments
Minnesota Planning
300 Centennial Office Building
658 Cedar Street
St. Paul, MN 55155

Dear Ms. Scotillo,

The Minnesota Association of Townships would like to thank you and your staff for taking time for our presentation regarding boundary adjustments and the concerns we have with the current annexation process. The enclosed prepared text is being offered as a supplement to the information provided to you and the members of your staff on July 24, 2001.

As you know, both the Minnesota Association of Townships (MAT) and the Local Government Alliance (LGA) have taken the position that the current process for boundary adjustments is fundamentally flawed. Please be assured that our opinion of the process is not a reflection of our opinion about the assistance that you and the other members of your staff provide. Quite the contrary, we recognize the long hours and diligent effort that you have put into assisting the legislature and interested parties in trying to achieve a resolution to what continues to be an extremely controversial issue. It is our hope that the result of your information gathering efforts and the report to the legislature will provide the legislature with the information it needs to take the necessary steps to correct the shortcomings in the boundary adjustment proceedings.

We are hopeful that our shared efforts will produce an atmosphere where parties to boundary adjustment disputes can arrive at a satisfactory, workable and durable resolution to there respective concerns. To that end we are confident that you will include the enclosed prepared text as an addition or addendum to your report to the legislature and give it the appropriate attention and recognition that you believe it deserves when you prepare that report.

On behalf of the Minnesota Association of Townships we would like to thank you once again for the time and attention you have given this matter and look forward to working with you and your staff in the upcoming legislative session.

Sincerely,

John P. Dooley

John P. Dooley, Attorney Minnesota Association of Townships

Kent A. Sulem

Kent A. Sulem, Attorney Minnesota Association of Townships

Mediation as a Viable Alternative to Administrative Hearings and Contested Case Proceedings In Matters Involving Boundary Adjustments and Annexation

Presentation to Minnesota Planning – Boundary Adjustments Division
By: The Minnesota Association of Townships

In response to a request made by Christine Scotillo, Director of the Municipal Boundary Adjustments Divisions of Minnesota Planning, representatives from the companion Township Organizations, Minnesota Association of Townships (MAT) and the Local Government Alliance (LGA) made a joint presentation to Ms. Scotillo and her staff on Tuesday July 24, 2000, regarding annexation issues confronting Minnesota Townships.

In preparation for the meeting with Minnesota Planning, and to outline a formal written response, MAT and LGA staff met and identified the key concerns with the current annexation process. MAT and LGA agree that neither association is seeking to abolish annexation. Instead, the primary objective is to develop a process that is equitable and efficient, and which adequately takes into account all local factors for the communities subject to a proposed annexation.

MAT and LGA further agree that while the current process has some good points (namely the 60 day time period during which all parties are encouraged to discuss the proposed annexation and to try to resolve specific concerns) overall, the current process is not equitable to townships; fails to allow for adequate consideration of local concerns (especially given the heavy reliance on metropolitan based ALJs who are neither trained nor experienced in municipal issues); results in slower proceedings and higher costs (especially for townships who are now required to pay half of the ALJ hearing costs, even if the annexation is granted in favor of the city); results in inconsistent application of the rules and procedures; and fails to adequately encourage the use of alternative dispute resolution in an effective manner.

While several of the above referenced concerns will either be discussed in a companion document prepared by LGA or were adequately covered on July 24th, MAT would like to take this opportunity to revisit the prospect of mediation as an affective tool in resolving boundary adjustment disputes.

Included in the July 24th discussion was a review of the advantages of mediation in annexation proceedings. One of the advantages was highlighted in a study conducted by Ms. Scotillo and her staff revealing that, of all boundary adjustment proceedings occurring since boundary adjustment jurisdiction was moved from the Municipal Board to State Planning, mediation enjoyed an overwhelming success in the eyes of those who had used it. Although mediation still represents a minority (i.e. less than 15%) of all boundary adjustment proceedings being conducted in Minnesota, the overwhelming majority (approximately 95%) of those who have used mediation agree that it is a more preferable means of settling boundary disputes than the traditional Municipal Board format or the current use of Administrative Law Judges. (Based on information provided by State Planning)

Presently, the boundary adjustment process allows parties to participate in up to three mediation sessions during the first 60 days of structured proceedings. Before a determination is made as to whether additional mediation sessions would be beneficial or whether the dispute should be referred to an administrative hearing, members of the State Planning staff prepare a preliminary "progress report." This report can be best viewed as a "due diligence" fact finding effort designed to assist the parties in recognizing the myriad of issues and considerations that, based on prior experience, the office of State Planning considers pertinent to the respective proposed boundary adjustment under consideration. Where the parties elect to proceed with mediation and craft a timeframe within which they can agree to work toward a consensus, that

agreement to proceed essentially "sets the stage" for a potentially successful mediation (or at least a good faith effort toward that result).

In virtually all of the instances referenced in the report, mediation produced a sense of "shared ownership" in both the process and its outcome. This "win – win" process, which allows the parties to share in cultivating alternatives and options that can bring a sense of "balance and equity" to the proceedings, is the hallmark of mediation. Where mediations are successful, the outcome is usually the product of a good faith dialog culminating a reliable, durable outcome. The mediation process is most often recognized as being balanced, fair, transparent and cost effective. Because of the "win-win" scenario, sharing the costs of a relatively inexpensive dispute resolution method is both reasonable and desirable.

While different styles or models of mediation are available (i.e. transformative, facilitative, evaluative) and where combinations of two or more models is common (i.e. hybrid), the need for skilled, knowledgeable mediators is apparent. It is not uncommon, for instance, for a mediation format to begin with the parties relying on the mediator to assist them in "getting and keeping communication going" (i.e. facilitative model). However, once the parties settle into their respective roles of being spokespersons for the interests of their communities and have had the opportunity to recognize that they share more in common than not, the mediator may choose to "pull back" to a more transformative posture. That is to say, once the parties have been able to identify that they are the "owners" of the process the mediator may don the posture of a transformative mediator and unobtrusively observe the transformation of recognition, acceptance and empowerment between and among the parties as the session progresses.

In these circumstances, a mediator has an ethical obligation to remain focused on the concept that the mediation is the "property" of the parties, from which they possess alienability – and the mediator does not. Even when asked by the parties to provide, for instance, legal, economic, professional or social-institutional advise, the mediator is ethically obligated to refrain from intervening in the process or "stepping into another role"(i.e. counselor or judge). If and when the parties agree to move to another phase of mediation (e.g. from transformative to facilitative to evaluative, etc.) and they are clearly cognizant of their option(s) and the mediator is asked to remain as the *neutral* during that transition and the parties specifically request a shift, then and only then should the mediator entertain accommodation.

Likewise, while an experienced mediator recognizes the importance of honoring the "parties process", subtle and acceptable prompts, in the form of paraphrasing, acknowledgment and open-ended questioning, can be helpful at certain stages of the mediation. The value of an experienced mediator is found in the ability to know when to let the parties "do for themselves". Ordinarily, a skilled mediator can be facilitative and, to some degree, "stimulate" creative problem solving by employing familiar techniques designed to encourage party participation. The ultimate goal, of course, is to allow the parties to mediate fully (and sometimes spiritedly) in good faith.

Not only do parties possess the capacity to mediate fully and in good faith (when they are "ready") they also possess the ability to experience a "shift" in their respective recognition of the other parties' position(s) and "own" their shared progress as it occurs. Eventually, where the parties have remained committed to achieving resolution (or at least substantial progress in areas of common interest) and a cognizant shift occurs, putting the remaining "pieces in place" becomes not only achievable but preferable. While not all mediations are intended to

accomplish restoration or reconciliation of the parties' relationship (whether personal, professional, commercial or municipal) a successful mediation can be measured by the parties' sense of satisfaction that they were each heard and understood without having to compromise their respective personal integrity.

Ultimately, the use of the mediation model of dispute resolution in all arenas, not just in boundary adjustments, is likely to become the norm rather than the exception. It is not uncommon, for instance, to read the "fine print" in a credit card agreement and realize that, while at one time customers were required to "arbitrate" their disputes with the credit card company, some companies are now choosing mediation before going to binding arbitration. They recognize that some disputes do not require a structured setting nor a costly process to achieve resolution. Similarly, in work settings, where disputes and conflict commonly occur (often because of a lack of or poor communication) use of the transformative-facilitative "hybrid" model of mediation can assist both employees and employers become more comfortable with direct conversation - without feeling threatened or threatening. In the court systems, both in Minnesota and in several Federal Circuit Courts, mediation required before a civil matter goes to litigation.

The mediation model is available and adaptable to most circumstances that may have previously only been litigated or arbitrated. The advantages of mediation are its cost effectiveness, and its flexibility. The parties are able to set the pace, establish the parameters, broaden and narrow those parameters and cultivate a resolution that is not necessarily grounded in any specific statutory or common law principles but, instead, grounded in creativity, imagination and a mutual desire to share in a fair and durable result. Unlike litigation or arbitration, where only one party emerges "the winner", mediation offers the opportunity for

both parties to share in a mutually beneficial resolution, though different from what might have been predicted in litigation or arbitration. More importantly, a successful mediation usually produces a resolution that the parties themselves have crafted and, therefore, are more likely to honor without reservation.

Discussion about mediation as a method of boundary adjustment will undoubtedly continue to be included in the discussions surrounding the issue of annexation and boundary adjustments. And, it will likely receive some attention from the legislature when the issue of boundary adjustments comes before the respective house and senate local government committees during the 2002 legislative session. In the meantime, it is appropriate that mediation receive heightened attention as a realistic alternative to contested case hearings in boundary adjustment proceedings.

RECOMMENDATIONS

Consensus among those present at the July 24th meeting was that an additional mediation "orientation mechanism" should be offered to parties to a boundary adjustment disputes. Among the ideas raised where suggestions for printed documents showing both the high success of mediation as well as its cost effectiveness. Additionally, where available, provide properly edited copies of mediated settlement documents showing the agreed upon final decision shared between representatives of the subject towns and cities. In addition to the idea of developing a guide or "cookbook" for mediation it was suggested that a 20-30 minute video be prepared to explain both by narration, how the mediation process works, and by giving examples of "mini mediations" designed to provide the viewer the opportunity to place him or herself at the mediation table and visualize how the process works.

In addition to specific recommendations on making mediation more available and attractive to parties, the following should be included for consideration:

1. The use of alternative dispute resolution should be encouraged where an election under the right to vote process does not occur. Barriers to the effective use of alternative dispute resolution should be removed from current statues (i.e. limits on tax revenue sharing, lack of adequate appellate procedures, etc.)
2. Training on the effective use of ADR should be made available.
3. Eliminate the use of ALJs for disputed case hearings. Disputed annexation not resolved by the right to vote or ADR should be submitted to a panel of local decision makers, preferably with knowledge of local government issues. (Note: The MAT L&R Committee approved a proposal to seek legislation to establish a local hearing panel.)

4. A more careful analysis should be employed to determine which entity is truly best able to deliver required services.

5. If a city fails to provide identified services to a newly annexed area within a reasonable period of time, the former township residents of that area should have the right to revert the property back to the township.

6. The right to vote on proposed annexations should be returned to township residents

COALITION OF GREATER MINNESOTA CITIES

Dedicated to a Strong Greater Minnesota

September 4, 2001

Ms. Christine Scotillo, Executive Director
Minnesota Planning Office of Strategic and Long-Range Planning
300 Centennial Building
658 Cedar Street
St. Paul, MN 55155-1603

Re: Comments of the Greater Coalition of Minnesota Cities Regarding the Preparation of Minnesota Planning's Report to the Legislature on the Boundary Adjustment Process

Dear Ms Scotillo:

In response to your request for comments from interested parties on the preparation of a report to the Legislature (due February 1, 2002) by Minnesota Planning on the "successes and failures" of the boundary adjustment processes used in Minnesota, this letter constitutes the official comments and recommendations of the Coalition of Greater Minnesota Cities (CGMC).

The CGMC appreciates the efforts that the Minnesota Planning Agency has made in gathering input from the various affected interest groups in advance of preparing its report, and the Agency's willingness to work equally with the affected interest groups in an effort toward continued development of Minnesota's boundary adjustment procedures.

The following comments and recommendations are broken down by the different annexation procedures currently available under Chapter 414:

ANNEXATION BY ORDINANCE PROCEDURES

Comments:

The current annexation by ordinance procedure is largely the same under the direction of the Office of Strategic and Long-Range Planning (Minnesota Planning) as it was under the former Minnesota Municipal Board. However, the CGMC has a few comments on this process and its further development.

The current annexation by ordinance process (M.S. 414.033) is an appropriate, efficient and cost-effective means of accomplishing simple annexations without the need for a divisive contested case hearing. This procedure allows property to be annexed through development and filing of a city ordinance with Minnesota Planning under four specific circumstances: 1) there is a property owner petition requesting annexation for an area that is 60 acres or less; 2) the land is municipally owned; 3) the land is completely surrounded by the city; or 4) the land has been platted for urban development averaging 21,780 square feet or less.

The CGMC believes that this procedure and the circumstances that allow such annexations work well. The CGMC supports the current annexation by ordinance procedure and supports efforts to further expand this process in order to make annexations easier, more efficient, less costly and less divisive. Making annexations more routine will provide property owners and developers alike with property located in areas surrounding cities with advance knowledge that, as urban development takes place, their property may be subject to annexation and extension of those city services necessary to support that development.

Recommendations:

1. Eliminate the current acreage restriction for a property owner petitioned annexation by ordinance so that a property owner, regardless of the size of the parcel owned, may request annexation by ordinance of the entire parcel, not just the portion that is 60 acres or less.

2. Expand current annexation by ordinance procedures to allow cities, under specific defined circumstances, to initiate annexations by ordinance for areas contiguous to cities that have developed or will develop in an urban or suburban character and need municipal services.

ORDERLY ANNEXATION PROCEDURES

Comments:

Like annexation by ordinance procedures, the statutory procedures governing orderly annexations (M.S. 414.0325) are largely the same under the process currently administered by Office of Strategic and Long-Range Planning as they were under the former Municipal Board. The CGMC believes that orderly annexation agreements, jointly negotiated and developed by cities and townships, have the ability to contain flexible terms and conditions, avoid costly annexation hearings, provide certainty to property owners and developers as to when annexation will occur and when services will be provided, and help build community relations through the development of a joint, cooperative agreement. The CGMC supports the current orderly annexation process

and believes that it is the best and most efficient means contained in the law for providing for future growth, service provision and orderly annexation.

Recommendations:

1. The CGMC believes that the state should provide incentives for cities and townships to develop and implement sound orderly annexation, growth and service agreements.

2. The CGMC believes that the state should provide disincentives, including prohibiting state funding, for new urban developments that are proposed to locate adjacent to cities using individual septic systems and wells when the city has existing infrastructure available to provide services cost-effectively to the development.

CONTESTED CASE ANNEXATION PROCEDURES

The third type of annexation procedure contained in current law is contested annexation requiring a trial-type hearing process to resolve a boundary adjustment dispute. Since the sunset of the Municipal Board and the transfer of its duties to Minnesota Planning in 1999, the state has implemented a new contested case hearing process for resolving such disputes between cities and townships. The current procedure now involves two phases; first going to mediation in an attempt to settle the dispute with the aid of a facilitator; and second, should mediation fail, transferring the dispute to the Office of Administrative Hearing (OAH) for a hearing before an Administrative Law Judge (ALJ) or submitting the dispute for a hearing as part of an arbitration proceeding.

Comments:

The CGMC has the following comments and recommendations on the new contested case boundary adjustment process:

1. The CGMC supports the new contested case annexation hearing process involving mediation followed by a defined hearing process, if necessary. The CGMC believes that having a fair process in place for resolving boundary adjustment disputes in a reasoned and consistent manner is critical to maintaining strong, healthy local communities, providing for cost-effective delivery of services, protecting taxpayers, and resolving pollution problems caused by urban development outside cites using individual septic systems and wells.

2. Like any dispute requiring a court trial or hearing, the CGMC believes that annexation disputes should give both parties the same opportunity to present their case to a neutral

decision-maker. The current process allows such consideration without bias toward any party involved in a dispute. The CGMC believes that the new boundary adjustment process is fair to all affected parties and is working well.

3. The CGMC believes that the mediation component of the new boundary adjustment process is necessary and appropriate and is also working well. Oftentimes boundary adjustment disputes involve parties that have become so entrenched in their respective positions that they are unwilling to talk. The new process requires the parties to come to the table and try to work out a resolution to the dispute. This process is overseen by a mediator who attempts to facilitate discussion between the disputing parties. The CGMC believes that the state should continue to require the parties to mediate such disputes in an effort to try to work out a settlement prior to going to a contested case hearing.

   Currently, the settlement process allows for a 60 day unfacilitated meeting period followed by a formal mediation process that can last up to an additional 120 days. The CGMC believes that the six month settlement period is sufficient and that if the parties cannot settle their dispute in this period of time, the dispute is likely not to be settled and should move on to the contested case hearing phase of the process.

4. In the event that mediation does not result in settlement, the CGMC supports the current process whereby the dispute is transferred to OAH for a contested case hearing before an ALJ. An ALJ is a professional, neutral judge without favor toward either the city or township positions on annexation matters. The CGMC supports the ALJ process since it is a defined process containing established rules and procedures, and because it allows more flexibility than is available through the district court system. The CGMC believes that the ALJ process is the fairest process for cities and townships to resolve these disputes and will result in unbiased decisions by the judge. The use of an ALJ process also makes the boundary adjustment process consistent with procedures used by other state agencies to resolve disputes requiring contested case hearings.

5. The cost of the new process is also an issue that has been raised. Though cost must be considered in evaluating the new process, it is not the most important issue. The CGMC believes that the most important issues are having a fair process giving the parties to a boundary adjustment dispute an equal opportunity to be heard by a truly neutral decision maker, and having reasoned decisions by the judge that are based on the facts and evidence presented at the hearing and the application of the law thereto.

   An ALJ conducting a hearing under the new process is going to be more expensive than the former Minnesota Municipal Board. While the former Municipal Board charged an artificially low $55 per diem based on a 30 year old standard, an ALJ bills at $91 per hour

and an arbitrator bills at private attorney rates well in excess of $100 per hour. Compared to arbitration, the ALJ process is a bargain.

Although the ALJ process is more expensive than the Municipal Board, the actual hearing or court costs for an ALJ, arbitrator, or the Municipal Board are often small compared to the costs of preparing and bringing a contested case hearing to trial. Such hearings are expensive and divisive and require the parties to hire attorneys, develop exhibits and hire experts to prove their case. The process is similar to preparing for trial at a district court level, but is less formal than district court, which should result in some cost savings to the parties. While the costs of an ALJ for a 3 day hearing may be as much as $2,500 ($91/hr x 3 days x 9 hours/day), the costs incurred by the parties to prepare their respective cases for trial (attorneys' fees, expert fees, exhibits, etc.) under the new process as under the former Municipal Board process are going to be similar.

Under the former Municipal Board process, a city's costs alone in preparing for an annexation hearing could often exceed $100,000. Some examples of city costs under the old Municipal Board process include the following:

City of Winona	(1996)	$353,477
City of Farmington	(1994)	$294,242
City of Eveleth	(1998)	$105,000
City of Fergus Falls	(1994)	$102,773
City of Prior Lake	(1997)	$ 29,930*

(*Additional $60,000 paid by developer)

Certainly, the costs of these disputes is high should they require a hearing. The CGMC believes that, despite the cost, having such a boundary adjustment dispute resolution process is necessary to the same extent and for the same reasons that a judicial system is necessary to resolve disputes that cannot be settled voluntarily. Given these costs, however, parties to such a dispute should have an incentive to settle the matter. The new mediation process provides such a cost saving forum to facilitate settlements. The CGMC also believes that costs could be reduced drastically by making annexations easier and expanding the current annexation procedures that do not require contested cases.

6. Where the state paid the hearing costs under the former process, the parties to a dispute under the current process are now allocated the hearing costs for the presiding ALJ or arbitrator. Requiring the parties to pay their own hearing costs makes the parties more accountable for filing or defending an annexation claim. While each party should be responsible for its own costs associated with preparing for a hearing, all parties to a boundary adjustment dispute requiring a hearing before an ALJ should share equally in

paying the cost for the ALJ. To do otherwise gives an incentive to the party not paying the costs to continue to fight since they will not be financially accountable for their actions.

7. The CGMC has reviewed the contested cases that have been filed and decided under the new process since its implementation in July 1999. The CGMC believes that, while some cases have been filed and decided under the new process, it would be helpful to have more cases decided to better gauge how the process is performing. A review of the results of the decided cases follows and gives some indication as to the fairness of the new process and how it is performing.

   In the two years that the new process has been in place, approximately ten cases (17 related matters) have been filed and decided. The results of those ten cases (17 matters) are as follows:

   a. 3 were withdrawn by the initiating city without going to a contested case hearing;
   b. 1 resulted in a joint settlement agreement between the city and township resolving the dispute;
   c. 3 resulted in approval of the requested annexation after the township withdrew its objection to the annexation;
   d. 1 approved an orderly annexation that was agreed upon by the city and township;
   e. 1 denied a city's petition for annexation;
   f. 1 incorporated a township into a new city;
   g. 1 denied a township's request for incorporation as a new city; and
   h. 3 resulted in approval of annexation after a contested case hearing before an ALJ.

   The CGMC believes that these results indicate that the process is working, has been applied fairly, and has resulted in unbiased decisions in favor of both cities and townships.

Recommendations:

1. Support the new contested case hearing process and only make minor and technical changes to the law that improve the current process and that have been agreed upon jointly by the CGMC, townships and counties. The CGMC believes that cooperation between the state's cities, townships and counties is critical. Since 1997, all changes to annexation law have been by joint agreement. The CGMC believes that that process is the best approach to making changes to improve state annexation law and should be continued.

OTHER COMMENTS AND RECOMMENDATIONS

There are a number of other boundary adjustment procedures contained in Chapter 414 for concurrent detachment annexation between abutting cites, detachment of property from a city to a township, and incorporation of a township into a city. To the extent that these additional boundary adjustment proceedings involve a contested case hearing, most of the comments above are equally applicable and will not be reiterated here.

However, the following are some additional general comments and recommendations regarding the current boundary adjustment process and some of the changes to the law being proposed for consideration by the Legislature:

1. The CGMC believes that all future incorporations of new cities should be prohibited. The state currently has 854 cities and a total of 3,501 local units of government. While Minnesota ranks 21st in population in the nation, the state ranks 7th in most local government units and ranks 1st in the number of townships. The state does not need more cities or additional units of government. The CGMC believes that the state should develop incentives for consolidation of contiguous cities and the merger of cities and contiguous urbanizing townships.

2. The CGMC believes that in looking at boundary adjustment issues, what is in the best interest of the entire community, city and township, should be of paramount concern. The parties involved in a contested case should have an equal voice and opportunity to be heard in a boundary adjustment dispute. Such disputes affect the entire community, not only the area proposed for annexation, in terms of their impact on city and township taxes, future land use, service delivery, economic development, and the environment.

   However, some township advocates are seeking to eliminate the voice of the city and its residents in such matters by attempting to reinstate the annexation election requirement or vote in the law. Such advocates seek to bias the process by providing that only township residents should have a voice in such matters by giving these residents the right to veto appropriate annexations to the detriment of the community. The CGMC is strongly opposed to reinstating such a requirement and believes that the Legislature acted wisely in 1992 when it repealed that requirement.

   Reinstating an annexation election/vote would render the statutorily-based contested case hearing process meaningless. It would give townships complete bargaining strength in land use matters thereby ending any incentive for townships to carry on future dialogue with cities on orderly annexation, comprehensive planning and

service agreements. It would establish circumstances where cities and townships would compete for economic development in the same community. Finally, it would give a few township residents more rights than city residents.

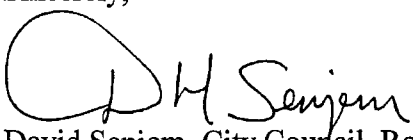
Oftentimes annexation disputes develop around an environmental problem created by urban development on septic systems in the township. Such problems involve septic systems leaking into area drinking water not only affecting the residents of the area proposed to be annexed but also the citizens located in the adjacent city. Reinstating an election requirement would give a few self-interested individuals the right to continue to pollute and the right to continue to require city taxpayers to pay the overburden associated with increased demand for services caused by township sprawl.

The CGMC believes that the state should take a strong position against reinstating an annexation election requirement. If the state's goal is to have a process that is fair to all citizens, it should oppose reinstating this requirement in law. The state should look past the rhetoric and focus on what is good land use, economic development and environmental policy.

Thank you for the opportunity to submit the foregoing comments and recommendations. The CGMC reserves the right to make additional comments on the report as it is developed and would appreciate the opportunity to review and comment on drafts of the report as it is prepared.

Should you have any questions or require additional information, please do not hesitate to contact me at (507) 284-8890 or Chris Hood at (651) 225-8840. We look forward to reviewing and commenting on your report.

Sincerely,



David Senjem, City Council, Rochester
Co-Chair, CGMC Annexation and Land Use Committee

cc: Dean Barkley, Director, Minnesota Planning

LOCAL GOVERNMENT ALLIANCE

Chair: Jim Fisher
Vice-Chair: Brenda Dicken
Secretary: Lucy Schultz
Treasurer: Dale Hoosier

P.O. Box 75
St. Michael, Minnesota 55376
Phone: 763-497-2360
Fax: 763-497-2599

Ms. Christine Scotillo
Director
Municipal Boundary Adjustments
Minnesota Planning
300 Centennial Office Building
658 Cedar Street
St. Paul, MN 55155

Re: State Planning Report Regarding Boundary Adjustment Process

Dear Ms. Scotillo:

Enclosed please find the Local Government Alliance's letter regarding the concerns our member townships have with the current annexation process. Per your request, I have also enclosed our "points for discussion" referred to by Michael Couri, Jim Fisher and Brenda Dicken during the hearing on this matter.

Your cooperation and courtesy in this matter is appreciated. If you have any questions please do not hesitate to contact this office.

Sincerely,

Robert Ruppe

Robert Ruppe
Administrator
Local Government Alliance

Enclosures

LOCAL GOVERNMENT ALLIANCE

Chair: Jim Fisher
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P.O. Box 75
St. Michael, Minnesota 55376
Phone: 763-497-2360
Fax: 763-497-2599

August 31, 2001

Ms. Christine Scotillo
Director
Municipal Boundary Adjustments
Minnesota Planning
300 Centennial Office Building
658 Cedar Street
St. Paul, MN 55155

Re: State Planning Report Regarding Boundary Adjustment Process

Dear Ms. Scotillo:

The Local Government Alliance ("LGA") would like to thank State Planning for the opportunity to address concerns our member townships have with the current annexation process. In this letter I have attempted to identify our member's key concerns regarding the annexation process, its successes and failures, and to identify a possible alternative.

It is the LGA's position that the current process used for boundary adjustments is fundamentally flawed. Minnesota Statute §414.01, which establishes the purposes and procedures for dealing with boundary changes with the implied intent that both municipalities and townships are to be treated equally under the process so that "the public interest in efficient local government will be properly recognized and served." For the reasons stated below, it is the LGA's belief that changes in both annexation laws and changes in dispute resolution procedures have tipped the balance on annexation so far in favor of cities that township governments and the people they represent have virtually lost their voice.

While the current process has some good points (namely, the 60 day time period in which all parties are encouraged to discuss the proposed annexation and to try to resolve specific concerns and mediation which gives the parties an additional opportunity to settle the case at the local level), overall the current process is not equitable to townships, fails to allow for adequate consideration of local concerns (especially given the heavy reliance on metropolitan based Administrative Law Judges ["ALJs"] who are neither trained nor experienced in

municipal issues), results in slower proceedings and higher costs (especially for townships who are now required to pay half of the ALJ hearing costs, even if the annexation is granted in favor of the city), results in inconsistent application of the rules and procedures, and fails to adequately encourage the use of alternative dispute resolution in an effective manner.

When the cost of the public voice trying to be heard in an annexation is prohibitive to both citizens and townships then the dispute system is fundamentally flawed. Citizens who do not ask for annexation, do not want it, derive no benefit from it and have no say in the government that orders it should not have to bear the additional burden of paying $30,000 to $125,000 or more in litigation costs to assert their rights. Townships often cannot afford the excessive and unpredictable costs of disputing an annexation because of their financial obligations to the remainder of their township.

Further, it is clear that ALJs are poorly suited to address the policy issues inherent in Minn. Chap. §414. The LGA can recommend no "fixes" for the ALJ process. Rather, the more efficient way to handle these disputes, from virtually every perspective (e.g. financial, political, best interest of the affected property owners, etc.) is to allow the landowners who are to be annexed to vote up or down on annexation. They know their communities. They know their own local politics. They know what form of government would be best to govern them and which government is better suited to deliver them the services they desire at the level of service they want. An ALJ can only guess at these issues.

To address these concerns, both the LGA and the Minnesota Association of Townships recommend that the right to vote on proposed annexations be returned to township residents. Our "Right to Vote" bill, a copy of which is attached, is narrowly tailored to streamline the procedure of contested annexation proceedings by providing affected residents and other property owners the opportunity to learn about the impact of the proposed annexation and to then vote on whether or not they wish to be annexed. The proposed bill eliminates most contested case hearings. It removes the attorneys and the politics from the process which will eliminate the "litigation" costs currently incurred by both the city and the township under the existing process. This bill does not affect annexations requested by a majority of affected property owners, orderly annexation agreements, or any other non-contested proceedings.

Advantages of the "Right to Vote" Legislation

1. Takes the decision of whether to annex from an administrative law judge and puts it back in the hands of the people to be annexed. The people are in the best position to know whether they can benefit from services the City may provide, even if it increases their tax rate.

2. Lets the residents and landowners determine which form of government will govern them. This represents the ultimate expression of self-determination and democracy.

3. Eliminates contested case hearings. Several townships have each spent $125,000 or more to defend recent contested annexations. Cities have probably spent as much or more, pushing the cost of each heavily contested hearing to the $250,000 range. The four most contested annexation cases in the last decade are estimated to have cost a total of over $1 million for all parties.

4. Takes the attorneys and experts out of the process—lets the people decide.

5. Takes the politics out of the process. Only the people decide, not elected or appointed officials.

6. Takes the pressure off of the legislature. Once a referendum is held, the "people have spoken."

7. Annexations of land 60 acres or less abutting the City may still be annexed by ordinance upon petition of 100% of owners without an election.

8. City and Township may still agree on an orderly annexation agreement and annex land by joint resolution on a fast timetable.

9. Streamlines the annexation process. Estimated to take only three to four months instead of current 1 year.

Neither the Minnesota Association of Townships nor the LGA are seeking to abolish annexation. Instead, the primary objective is to develop a process that is equitable and efficient, and allows the people most affected to determine the form of government that is best for them.

The current boundary adjustment process is ill-conceived, has no grounding in reality and needlessly separates property owners from the local government of their choosing. It should be discarded in its entirety and replaced with a more efficient system that allows citizens to decide who will govern them.

Sincerely,

Jim Fisher

Jim Fisher
Chairman
Local Government Alliance

Enclosure

cc: Minnesota Association of Townships
Chuck Brown

C:\Bob\LGA\LGA Letter to State Planning.doc

KEY: ~~stricken~~ = old language to be removed
underscored = new language to be added

NOTE: If you cannot see any difference in the key above, you **need to** change the display of stricken and/or underscored language.

Authors and Status ▪ List versions

H.F No. 869, as introduced: 82nd Legislative Session (2001-2002) Posted on Feb 15, 2001

A bill for an act

relating to local government; providing procedures and criteria for municipal annexation of unincorporated land; providing certain exceptions; amending Minnesota Statutes 2000, sections 414.031, by adding subdivisions; and 414.033, subdivision 2.

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

Section 1. Minnesota Statutes 2000, section 414.031, is amended by adding a subdivision to read:

Subd. 5a. [ANNEXATION ELECTION.] (a) If the proceeding for annexation is started by a resolution of the town board of the township containing the area proposed to be annexed as provided in subdivision 1, clause (b), if the proceeding is started by petition of a majority of the property owners within the area to be annexed, or if the office of strategic and long-range planning has assumed jurisdiction under subdivision 1, clause (d), and orders that the entire township named in the resolution be annexed to the city named in the resolution, a referendum is not required. A referendum is not required if the proposed annexation is to remedy or prevent environmental degradation as determined by the Minnesota pollution control agency.

(b) Except as provided in paragraph (a), at least ten days before submitting a resolution to the director of the office of strategic and long-range planning, the municipality shall provide mailed notice to the property owners of the area proposed for annexation. The notice must set forth the boundaries of the territory proposed for annexation, the reasons for the annexation, the date on which the resolution will be submitted to the director, and a clear explanation of the right to petition for an election on the proposed annexation and the petition requirements. In addition, at least ten days before the municipality submits its resolution to the director, it must publish notice in a qualified newspaper of general circulation in the area proposed for annexation. The municipality must submit to the director with its resolution, proof by affidavit that the required mailed and published notices were provided.

(c) If a petition is signed by at least 35 percent of the property owners or 100 property owners in the area proposed for annexation, whichever is less, and is submitted to the director within 60 days after the resolution was submitted, a public hearing and an election must be held on the annexation. The director shall fix a day not less than 20 days, nor more than 90

days, after verification of the petition, when an election must be held at a place designated by the director. The director shall also order a joint public hearing of the city council and township board to be held not less than ten and not more than 30 days prior to the election. The actual date, time, and place of the hearing shall be determined by the chair of the affected town board in consultation with the mayor of the annexing municipality. The chair of the affected town board shall chair the hearing.

(d) The director shall cause a copy of the resolution, and the notice of the hearing and election, to be posted not less than ten days before the hearing in three public places in the township, and shall cause notice of the election to be published for two successive weeks in a qualified newspaper of general circulation in the township. The director shall appoint the necessary election judges from the county's list of election judges for the affected township from the most recent general election. The director shall designate the polling places, using so far as possible the places within the township designated as polling places for the last general election. The polls must be open at least 13 hours and until at least 8:00 p.m. The director shall ensure that the election is conducted in compliance with this subdivision, and to the extent practical and not otherwise inconsistent with this subdivision, with the provisions of law regulating special elections.

(e) Only eligible voters, as defined in section 201.014, residing in the area proposed to be annexed and other owners of real property located within the area proposed to be annexed are entitled to vote.

(f) The ballot must bear the words "For Annexation" and "Against Annexation" with a square to the left of each phrase so that the voter may indicate by a mark (X) the voter's choice. The ballots and election supplies must be provided and the election judges must be paid by the annexing municipality and the affected township in equal shares.

(g) Immediately after counting the ballots, the election judges shall make a signed and verified certificate declaring the time and place of holding the election, that they have canvassed the ballots cast, and the number cast both for and against the proposition. The election judges shall then file the certificate with the director.

(h) If the certificate shows the majority of the votes cast were "For Annexation," the director shall order the annexation. If the ordered annexation involves 50 percent or more of the affected township's property, the director shall also order the election of municipal officers as provided in section 414.09, subdivision 3. If a majority of the votes were cast "Against Annexation," the director shall not consider the resolution.

(i) The director shall, upon receipt of the certificate, notify all parties of record of the election results.

Sec. 2. Minnesota Statutes 2000, section 414.031, is amended by adding a subdivision to read:

Subd. 5b. [NO ANNEXATION FOR TWO YEARS.] If an annexation under this section is denied or a referendum election under subdivision 5a is defeated, no proceeding for the annexation of substantially the same area may be initiated within two years from the date of the director's order or certification of the election results, unless the proceeding is initiated by a majority of the area's property owners and the petition is supported by the governing body of both the affected township

and the municipality to which the land would be annexed.

Sec. 3. Minnesota Statutes 2000, section 414.033, subdivision 2, is amended to read:

Subd. 2. [CONDITIONS.] A municipal council may by ordinance declare land annexed to the municipality and any such land is deemed to be urban or suburban in character or about to become so if:

(1) the land is owned by the municipality;

(2) prior to June 1, 2001, the land is completely surrounded by land within the municipal limits;

(3) the land abuts the municipality and the area to be annexed is 60 acres or less, and the area to be annexed is not presently served by public sewer facilities or public sewer facilities are not otherwise available, and the municipality receives a petition for annexation from all the property owners of the land; or

(4) the land has been approved after August 1, 1995, by a preliminary plat or final plat for subdivision to provide residential lots that average 21,780 square feet or less in area and the land is located within two miles of the municipal limits.

STATE PLANNING ANNEXATION MEETING
POINTS TO BE DISCUSSED

1. 60 day Meetings are good. Forces the parties to talk, often for the first time. Facilitates an exchange of information that often bears directly on the issues. Usually leads to some better understanding of each party's point of view. Often times lays the ground work for settlement.

2. State Planning should prepare a packet of information to be given to Cities and Towns giving examples of how other cases have been resolved.

3. Mediation is good. Gives the parties an additional push to help settle the case. Allows the case to be settled on a local level, where it belongs rather than at the state level.

4. Arbitration has no effective appeal process. Uncertainty as to whether a qualified arbitrator will be chosen.

5. ALJ is bad
   A. No local representation. Annexation cases involve a large number of issues as embodied by the 14 factors. All of these issues are tied to a long line of local history (e.g. history of development in the area, history of the relations of the parties, etc.) which cannot be separated from the issues involved. No person can be expected to obtain a full understanding of the history of an area in addition to all of the pertinent facts (WWTP capacity, water system capacity, financial condition, planning and zoning regulations, etc.) in a single contested case hearing. Local officials such as county commissioners usually have an understanding of the local history and can use this history as a backdrop in which to evaluate the case. Without local representation, ALJ cannot possibly get a realistic picture of what is going on in each community in the limited time of a trial. Case is essentially tried in a vacuum, with no firm grounding in which to interpret the evidence
   B. ALJ has no real experience in municipal issues.
   C. Township has to pay the cost of the judge just to defend its land. Cities benefit from annexation, not townships, and thus cities should pay all of the ALJ's costs.
   D. Interrelationship between MMB rules and ALJ rules is unclear.
   E. ALJ costs are way too expensive. No other defendant has to pay ALJ's costs in any other proceeding. Why in an annexation proceeding?
   F. ALJ's are not set up to deal with policy issues. M.S. 414 is all about policy, particularly since there cannot be one set definition of urban or suburban that applies everywhere in the state. With three rotating ALJ's,

and with each having a potentially different view of the policy issues implicit in Chapter 414, it is impossible to predict for clients what the likely outcome of a case may be. This makes it more difficult to convince a client that a proposed settlement is a good settlement if we have no probable outcome to compare a settlement to.

G. ALJ's do not effectively deal with the opinions of the public sought to be annexed.

H. Because ALJ's do not fully understand the complex web of municipal laws, their orders sometimes order a legal impossibility (Forest Lake).

I. None of the ALJs hearing annexation cases are from outstate Minnesota. It is unrealistic to expect them to fully understand outstate boundary issues if they all live and work in the metro area. Without a full appreciation of outstate issues, they will continue to make decisions from a metro perspective, which will always prevent the ALJ's from making sound decisions on a myriad of complex, sometimes small-town issues.

MN PLANNING

In the year 2000, a number of townships banned together to form the LGA (Local Government Alliance). The group has one intention and that is to have the "right to vote" wording put back into the annexation bill.

Since the legislative session of 1992, when a last minute amendment had the words "right to vote' removed from the annexation bill, the townships have been a war zone. Land grab is what you could say politely is what is going on with the present annexation law. It reminds me of the US Govt taking away the land from the Indians, "Did they have a vote or a voice on the issue of their land?".

In Minnesota statute 414.01, which has to do with proceedings for boundary disputes there is a statement that says, " it is an implied intent that both municipalities and townships be treated equally. Are the Townships treated equally?

When the MMB (Minnesota Municipal Board) was sunset, there powers went to Mn Planning. The Townships were not in total agreement with the MMB but at least there were provisions for local representation and individuals versed in the issues of the affected areas.

When the State Planning Office took over boundary disputes it tipped the balance on annexation in favor of the cities, which they crow about at all times. You will not see any city complaining about the process.

Townships across the state are not against annexation. There are some instances where annexation is better. But we want our residents to have the right to vote on their destiny. When a city annexes another city, there is a vote by both municipalities on the issue. When a city wants to annex a Township, there is a vote by the city but none allowed by law for the Township.

In annexation by ordinance hearings, a city will have a public hearing. With overwhelming public backlash against an annexation, the city will ignore the vote and proceed with the process. The same public voice will ask the State Planning Office to review the conditions of annexation and to whether it is appropriate, the Office will claim they have no authority to do so.

Some flaws that I see in a contested annexation are:

1. Annexations into cities must be contingent upon the provision of the full range of municipal services. Many annexations are approved with promises that are never filled. A provision should be put in for a reversal .

2. Annexations should be planned to ensure that the city is indeed the best provider of municipal services. In many cases, the Town is equally or more capable of providing those needed services.

3. Orderly annexation agreements need to be equally binding on all parties.

4. We need better rules on defining disclosure and discovery for annexation hearings. The municipality proposing annexation should be required to disclose its annexation plans in writing and the town should have access to all the facts and documents that support these plans.

5. Summary judgement procedures should be available at least to a township opposing an annexation so that when a petition clearly lacks any statutory basis, the township can seek dismissal.

6. No change in form of government (town or city, or viceversa) should occur without a ballot in the affected area.

The ALJ (Administrative Law Judge) system provides nothing for townships. The costs for ALJ's are ridiculous.Why do Townships have to pay the court costs of a ALJ during annexation hearings when they are defending their land. It is a heavy burden when costs run around a $100,000. Also, there are no other proceedings where a defendant pays ALJ's costs, Why in an annexation proceeding?

Many of the ALJ's do not fully understand the complexities of issues that come into place in a annexation hearing. They are metro people who live, work and deal within that structure. If a person reads a book on how to operate a submarine, does that make you an expert on how to operate one?.

Decision making from a ALG is from a metro perspective, not knowing fully the basic issues of a township or a small city. They do not understand, land use laws, shoreland management, septic issues, planning and zoning, issues that township officials face all of the time.

The system that is in place now, allows the city to stall its way through all the required meetings and at the same time blaming the township for not wanting to be a part of the process. In the end, the city knows that a ALG will handle the case and make the decision knowing the past history that townships will not win.

Remove ALJ's from the process and give us mediation and an impartial board to hear all comments.

MINNESOTA PLANNING

Office of Strategic and Long Range Planning

COMMENTS FOR MEETING ON PROCEDURES FOR ANNEXATION DISPUTE RESOLUTION

Minnesota Statute 414.01, establishes the purposes and proceedings for dealing with boundary changes such as annexation with the implied intent that both municipalities and townships be treated equally, as stated in part in Subdivision 1 where one of the purposes of the law is "to protect the integrity of land use planning in municipalities **and** unincorporated areas so that the public interest in efficient local government will be properly recognized and served". Changes in annexation law and changes in dispute resolution procedures from the Minnesota Municipal Board to the State Planning Office have tipped the balance on annexation so far in favor of Cities that Township governments and the people they represent have virtually lost their voice.

When the Townships and their people being annexed speak in opposition and no one listens, the system is fundamentally flawed and needs to be fixed. For example:

> In annexation by ordinance a city can hold one public hearing, where in spite of overwhelming opposition, the voice of the township public is totally ignored by a governmental body to which township residents have no recourse. That same public voice is again ignored when it asks the State Planning Office to review the conditions of the annexation to determine whether it is appropriate and the Office claims they have no authority to do so. Annexation becomes a simple land grab when no consideration is given to which unit of government can best meet the needs of the people, when no consideration is given to the benefits or detriments to the people and when no consideration is given to the consequences to the township involved. If the State Planning Office truly does not have the authority to consider the factors listed in Subd. 4 of 414.031 for **all** annexations, then it should be given the authority to do so. Otherwise all annexations are presumed to be equal and they are obviously not. Circumstances can exist which make an annexation, inequitable, detrimental, costly and poor public policy.

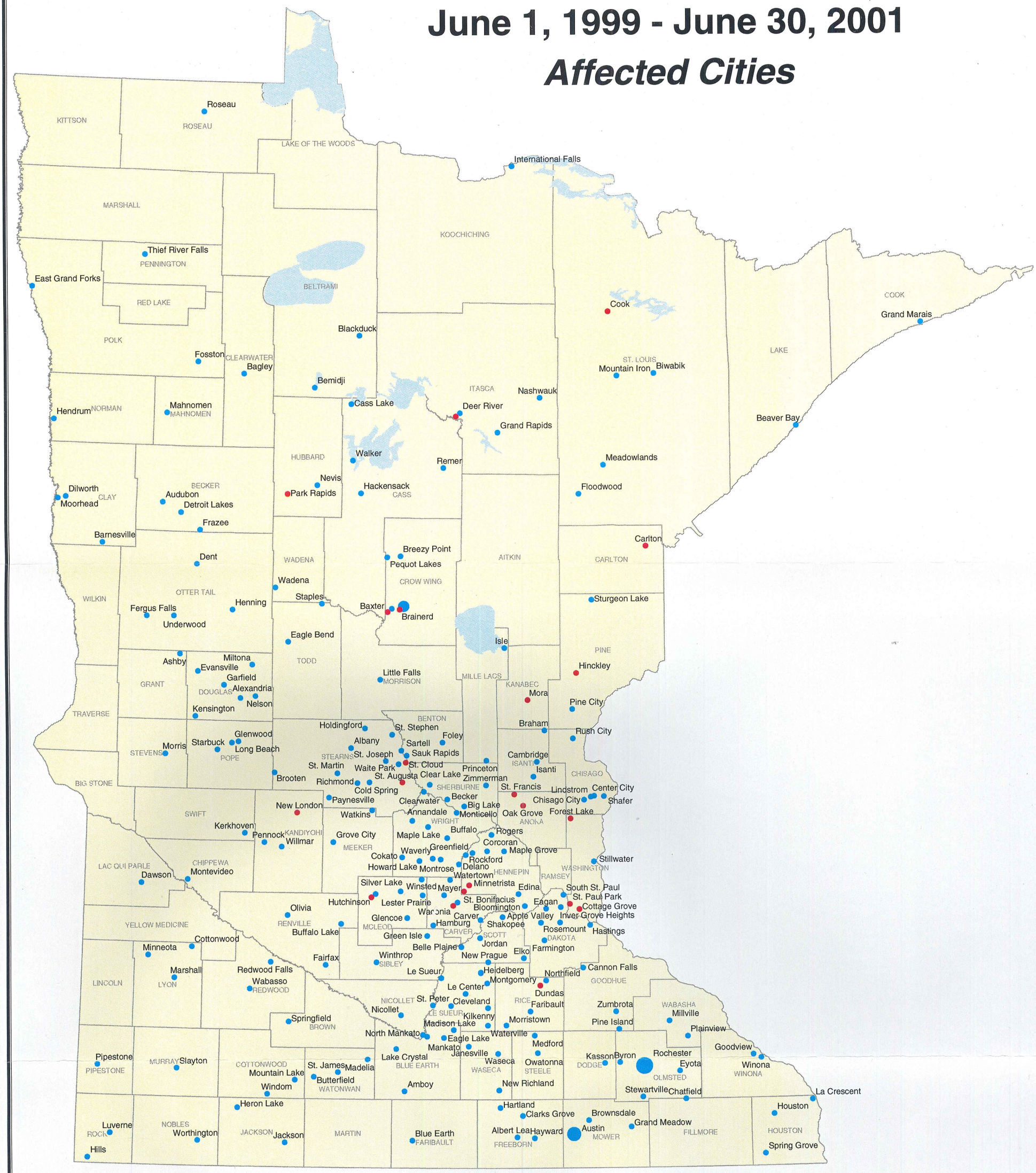
When the cost of the public voice trying to be heard in an annexation is prohibitive to both citizens and Townships then the dispute system is again fundamentally flawed. Citizens who do not ask for annexation, do not want it, derive no benefit from it and have no effective say in the government that orders it should not have to bear the additional burden of paying $30,000 to $130,000 or more to appeal it. Townships often cannot afford the excessive and unpredictable costs of disputing an annexation because we have a financial obligation to the remainder of our township.

When the public voice disputing an annexation is finally heard by a single Administrative Law Judge, who may or may not be familiar with the intricacies of Township government and services, the future governance of that public is being determined by "placing all the eggs in one basket". The voices of township officials in the Olmsted County area are all saying replace the ALJ with an **impartial** board to decide annexation disputes.

Municipal Boundary Adjustments

June 1, 1999 - June 30, 2001

Affected Cities



Number of Boundary Adjustments

Uncontested Proceedings

- 1 - 20 (213)
- 22 (1)
- 36 (1)
- 47 (1)

• Contested Proceedings

Prepared by Minnesota Planning's Land Management Information Center.

This map is provided 'as is' without any warranty whatsoever, including but not limited to any warranty as to its performance, merchantability, or fitness for a particular purpose.

Project: c:\83403158\arcmap\mba_adj.mxd

Prepared: January 10, 2002

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MN PLANNING