

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Orderly Annexation  
of Certain Real Property to the City  
of Shakopee from Jackson Township  
(MBAU Docket OA-1694-6)

**ORDER APPROVING  
ANNEXATION**

This matter is pending before Administrative Law Judge Jessica A. Palmer-Denig upon City Resolution R2021-090 (City Resolution to Annex) adopted by the City of Shakopee (City), seeking annexation of certain real property (Property) from Jackson Township (Township). Pursuant to Minn. R. 6000.0800 (2021), the City's filing was complete on August 3, 2021.

James J. Thomson, Kennedy & Graven, Chtd., appears on behalf of the City. Timothy J. Keane, Kutak Rock, LLP, appears on behalf of the Township.

The parties entered into a Joint Resolution for Orderly Annexation on March 6, 2018 (Joint Resolution for OA). The City adopted the City Resolution to Annex on June 15, 2021, requesting annexation under the Joint Resolution for OA of the Property, which is owned by Garth and Catherine Kangas, upon a petition of the property owners. The Property is legally described as follows:

That part of the Northwest Quarter of the Southwest Quarter of Section 13, Township 115, Range 23, Scott County, Minnesota, that lies east of the West 938.00 feet thereof and South of a line described as follows:

Beginning at a point on the east line of said Northwest Quarter of the Southwest Quarter distant 69.85 feet South from the Northeast corner of said Northwest Quarter of the Southwest Quarter; thence west to a point on the west line of said Northwest Quarter of the Southwest Quarter distant 196.26 feet south from the Northwest corner of said Northwest Quarter of the Southwest Quarter and said line there terminating.

The Township filed an objection to the annexation with the Office of Administrative Hearings on August 6, 2021. The City and Township subsequently filed supplementary materials, and this matter came on for a court-ordered telephone conference on August 18, 2021.


Based upon a review of the record and the arguments of the parties, and for the reasons expressed in the accompanying Memorandum, which is incorporated herein, the Administrative Law Judge issues the following:

Date Filed: August 31, 2021  
Document Number: 220615  
Office of the Minnesota Secretary  
of State, Steve Simon

## ORDER

1. Pursuant to Minn. Stat. § 414.0325 (2020), the City Resolution to Annex is deemed adequate in all legal respects and properly supports this Order.
2. Pursuant to the terms of the Joint Resolution for OA, the City Resolution to Annex, and this Order, the Property is **ANNEXED** to the City.
3. Pursuant to the agreement of the parties and as allowed by Minn. Stat. § 414.036 (2020), the City will reimburse the Township in accordance with the terms of the Joint Resolution for OA.

Dated: August 31, 2021

  
JESSICA A. PALMER-DENIG  
Administrative Law Judge

## NOTICE

This Order is the final administrative order in this case under Minn. Stat. §§ 414.0325, .07, .09, .12 (2020). Pursuant to Minn. Stat. § 414.07, subd. 2, any person aggrieved by this Order may appeal to Scott County District Court by filing an Application for Review with the Court Administrator within 30 days of this Order. An appeal does not stay the effect of this Order.

Any party may submit a written request for an amendment of this Order within seven days from the date of the mailing of the Order pursuant to Minn. R. 6000.3100 (2021). However, no request for amendment shall extend the time of appeal from this Order.

## MEMORANDUM

### I. Introduction

The dispute in this case turns upon the language of the Joint Resolution for OA executed by the parties in 2018.<sup>1</sup> The Township contends that the agreement designated areas of the Township for annexation according to a specific schedule. The Township asserts that areas A-D were available for immediate annexation to the City, but that the parties agreed to forestall annexation of areas E and F until after January 1, 2050. The

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<sup>1</sup> Another case involving the same parties and presenting identical issues is concurrently pending before the Administrative Law Judge and these matters have been heard and considered together. See *In re the Orderly Annexation of Certain Real Property to the City of Shakopee from Jackson Township* (MBAU Docket OA-1694-7), OAH 71-0331-37728 (Minn. Office Admin. Hearings).

Township maintains that this schedule allows expanding development of the City while permitting the Township to retain core property to preserve its character and tax base.

The City disagrees, arguing that the phased annexation schedule articulated in the Joint Resolution for OA applies only to City-initiated annexations. The City notes that the proposed annexation in this case was initiated by the property owners, not the City. The City points to a prior matter adjudicated by the Office of Administrative Hearings in 2018, in which the Township filed a resolution in opposition to annexation under the Joint Resolution for OA, with terms essentially identical to the one it filed in this case.<sup>2</sup> In that matter, however, the Township conceded that the issues it raised were not legal objections, but that the Township objected in order to express its dissatisfaction with the City's communication and timing related to the annexation.<sup>3</sup> The City also contends that the Joint Resolution for OA must be interpreted to permit property owners to request annexation without waiting until 2050, because state law affords property owners the right to seek annexation of certain property to a municipality.

As explained below, the Administrative Law Judge determines that the staging schedule in the Joint Resolution for OA does not apply to property owner-initiated annexations. Therefore, annexation of the Property must be approved.

## **II. Analysis**

### **A. Legal Standard**

Under Minn. Stat. § 414.0325, subd. 1(a), "one or more townships and one or more municipalities, by joint resolution, may designate an unincorporated area as in need of orderly annexation." A designated area is "any area which the signatories to a joint resolution for orderly annexation have identified as being appropriate for annexation, either currently or at some point in the future, pursuant to the negotiated terms and conditions set forth in the joint resolution."<sup>4</sup> Minn. Stat. § 414.0325, subd. 6, provides that an orderly annexation agreement is a binding contract between the parties.

As the Joint Resolution for OA is a contract, the Administrative Law Judge looks to principles of contract interpretation to analyze the issues presented. When interpreting a contract, the court must determine if the language is clear and unambiguous, such that it has only one reasonable interpretation.<sup>5</sup> If so, the court must give effect to the language of the contract.<sup>6</sup> Contract language is read according to its plain and ordinary meaning.<sup>7</sup> Terms must be considered in the context of the entire contract and are not construed to

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<sup>2</sup> *In re the Orderly Annexation of Certain Real Property to the City of Shakopee from Jackson Township (MBAU Docket OA-1694-2)*, OAH 84-0331-35649, ORDER APPROVING ANNEXATION (Minn. Office Admin. Hearings Nov. 26, 2018). The Administrative Law Judge notes that while the Township's resolutions in 2018 and in the present case are essentially identical, in this proceeding the Township has made no concession as to its arguments and has presented a dispute ripe for decision.

<sup>3</sup> *Id.* at 2-3.

<sup>4</sup> Minn. Stat. § 414.0325, subd. 1(b).

<sup>5</sup> *Halla Nursery, Inc. v. City of Chanhassen*, 781 N.W.2d 880, 884 (Minn. 2010).

<sup>6</sup> *Id.*

<sup>7</sup> *Brookfield Trade Ctr., Inc. v. Cnty. of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998).

lead to a harsh and absurd result.<sup>8</sup> Further, courts interpret a contract to give meaning to all of its provisions.<sup>9</sup>

## **B. The Joint Resolution for OA**

The 2018 Joint Resolution for OA designated all of the land in the Township as subject to orderly annexation under the agreement.<sup>10</sup> The agreement provides that:

All petitions for annexation, or initiation of annexation, shall occur in accordance with the provisions identified by this section. Where state statute allows for a petition to be filed or initiated not in conformance with this section of the Agreement, the legislative body of the City hereby agrees that favorable action will not occur on said petition without the prior or concurrent amendment of this Agreement in accordance with the provisions identified herein.<sup>11</sup>

The Joint Resolution for OA provides that annexation of land subject to the agreement may be initiated by petition of the property owners or by the City. Regarding property owner-initiated annexations, the agreement states: “Any landowner, or combination of multiple landowners, with property adjacent to the municipal boundary of the City, may petition the City to annex their property in accordance with this Agreement.”<sup>12</sup>

For City-initiated annexations, the Joint Resolution for OA provides standards for annexation of both undeveloped and developed properties.<sup>13</sup> As to undeveloped properties, the Joint Resolution for OA provides for annexation as follows:

The City may in accordance with the staging schedule contained in Section II.9 and without a petition of the property owners, annex undeveloped property, or multiple undeveloped properties, within the Township if at least twenty five (25) percent of the boundary of the subject property, or combination of contiguous properties, abuts the City’s municipal boundary.<sup>14</sup>

For developed properties, the City may “at any time, without a petition of the property owners, annex developed property or multiple adjacent properties within the Township completely surrounded by the municipal boundary of the City,” subject to certain conditions.<sup>15</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Joint Resolution for OA at Section I, ¶ 6.

<sup>11</sup> *Id.* at Section II, ¶ 1.

<sup>12</sup> *Id.* at Section II, ¶ 4.

<sup>13</sup> *Id.* at Section II, ¶¶ 7-8.

<sup>14</sup> *Id.* at Section II, ¶ 7.

<sup>15</sup> *Id.* at Section II, ¶ 8.

The Joint Resolution for OA also contains two sections addressing the standards for determining adjacency, one for property owner-initiated annexations and a different standard for City-initiated annexations.<sup>16</sup> For City-initiated annexations, the agreement provides standards for determining adjacency of both undeveloped and developed properties.<sup>17</sup>

Section II, paragraph 9, provides the staging schedule referenced in the agreement's provision regarding the City's annexation of undeveloped Township lands.<sup>18</sup> This portion of the agreement references an Annexation Staging Area Map, attached to the agreement as Exhibit A, and provides that:

If all of the other requirements for annexation contained in this Agreement are met, property within the Annexation Staging Area is eligible for City-initiated annexation in accordance with the following schedule:

- (a) Property located in Area A is eligible for annexation any time after both the City and the Township approve this Joint Resolution.
- (b) Property located in Area B is eligible for annexation any time after December 31, 2017.
- (c) Property located in Areas C and D is eligible for annexation any time after December 31, 2017, provided, however that no property in Area C can be annexed until at least 25% of the property located in Areas A & B combined has been annexed into the City.
- (d) Property located in Areas E and F are eligible for annexation any time after January 1, 2050.

The City is not obligated to initiate annexation of all of the property in any particular area before initiated annexation of property in another area.<sup>19</sup>

### **C. Interpretation**

There is no dispute that the Property is located in the portion of the Township designated as Area E on the Annexation Staging Area Map. There is also no dispute that the Property is adjacent to the City's municipal boundary. The sole issue to be decided is whether the staging schedule applies to annexation of property when initiated by property owners rather than the City.

The Joint Resolution for OA plainly provides that property may be annexed by the City at the request of property owners or when initiated by the City, and the agreement sets different procedures and standards for annexations depending on how the

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<sup>16</sup> *Id.* at Section II, ¶¶ 2-3.

<sup>17</sup> *Id.* at Section II, ¶ 3.

<sup>18</sup> *Id.* at Section II, ¶ 9.

<sup>19</sup> *Id.*

proceeding is initiated. The sections relating to property owner-initiated annexations do not contain any time limit or reference the staging schedule.<sup>20</sup> In contrast, the staging schedule itself expressly states that property is “eligible for City-initiated annexation” according to the schedule, and the provision authorizing City-initiated annexations of undeveloped property likewise references the schedule, stating “[t]he City may in accordance with the staging schedule contained in Section II.9 and without a petition of the property owners, annex undeveloped property . . . .”<sup>21</sup>

The Administrative Law Judge determines that property owner-initiated annexations are not subject to the staging schedule. The Joint Resolution for OA states that property owners may request that the City annex their property “in accordance with this Agreement;”<sup>22</sup> that reference is best construed to mean that such annexations may be accomplished in accordance with the terms that specifically relate to property owner-initiated annexations. It does not mean that property owner-initiated annexations are subject to the staging schedule simply because the staging schedule is also contained within the agreement. By its express terms, the staging schedule relates to City-initiated annexations of undeveloped property.

The City and Township have agreed that annexations will proceed according to certain terms, and that annexations outside the terms of the agreement will not receive “favorable action” by the City.<sup>23</sup> Under Minn. Stat. § 414.0325, subd. 6, a township and municipality may agree that an orderly annexation agreement provides the exclusive procedure for annexing designated unincorporated property, after which the municipality may not annex such property by any other procedure. Yet, other provisions of the municipal boundary adjustment laws permit property owners to seek annexation of property abutting a municipality through annexation by ordinance under Minn. Stat. § 414.033 (2020), or to initiate a proceeding to obtain approval of annexation through an order of the chief administrative law judge, as provided in Minn. Stat. § 414.031 (2020). Reading the agreement as urged by the Township would deny property owners in Areas E and F, who are not parties to the Joint Resolution for OA, the opportunity to seek annexation of their property until 2050. By excluding property owner-initiated annexations from the staging schedule, however, the Joint Resolution for OA channels property owners with land adjacent to the City’s boundary through the orderly annexation process without denying them an opportunity to seek annexation of their land.<sup>24</sup>

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<sup>20</sup> *Id.* at Section II, ¶¶ 2, 4.

<sup>21</sup> *Id.* at Section II, ¶¶ 7, 9.

<sup>22</sup> *Id.* at Section II, ¶ 4.

<sup>23</sup> *Id.* at Section II, ¶ 1.

<sup>24</sup> The Joint Resolution for OA provides that property owners “may petition the City to annex their property . . . .” *Id.* at Section II, para. 4. Under Minn. Stat. § 414.031, subd. 1(c), a petition for annexation by order of the chief administrative law judge that is initiated by property owners must be accompanied by a resolution of the annexing municipality supporting the petition. Minn. Stat. § 414.033, subd. 1, provides that “[u]nincorporated property abutting a municipality may be annexed to the municipality by ordinance.” Property owners do not have a right to annexation of their land, as a municipality always retains the right to reject a request for annexation. In each instance, however, these provisions offer property owners the right to seek annexation and a process through which the request may be considered and acted upon.

The Township contends that the staging schedule must apply to property owner-initiated annexations in order to afford the Township the benefit of its bargain. The Township argues that it negotiated the staging schedule in order to preserve its character and tax base by retaining its core property through 2050. If property owners within Areas E and F can obtain annexation sooner, the Township maintains it will not be able to achieve this goal.

Only properties adjacent to the City's boundary, as defined by the Joint Resolution for OA, qualify for property owner-initiated annexation. Property within Areas E and F that are not located at the City's boundary can only be annexed through City-initiated annexation, and the City is limited to annexing those properties after January 1, 2050. The Administrative Law Judge recognizes that as the City annexes land at its boundary, other properties within Areas E and F could be adjacent to the newly-drawn boundary and subject to annexation if the property owners wish to seek it. This does not provide a basis for the Administrative Law Judge to ignore the plain language of the Joint Resolution for OA.

#### **D. Review Process**

Minn. Stat. § 414.0325 provides for limited review of annexations under an orderly annexation agreement. If a joint resolution designates an area as in need of orderly annexation and states that no alteration of its stated boundaries is appropriate, the administrative law judge may review and comment, but may not alter the boundaries.<sup>25</sup> Further, if a joint resolution designates an area as in need of orderly annexation, provides for the conditions for its annexation, and states that no consideration by the administrative law judge is necessary, the administrative law judge may review and comment, but shall, within 30 days, order the annexation in accordance with the terms of the resolution.<sup>26</sup>

The Joint Resolution for OA contains provisions triggering this limited review process. The agreement states:

The Township and City mutually agree and state that this Joint Resolution and Agreement sets forth all of the conditions for annexation and that no consideration by the [Municipal Boundary Adjustment Unit (MBAU)] is necessary for individual annexations which occur in accordance with this Agreement. MBAU may review and comment, but shall, within 30 days, order the annexation in accordance with the terms of this Joint Resolution.<sup>27</sup>

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<sup>25</sup> Minn. Stat. § 414.0325, subd. 1(g).

<sup>26</sup> *Id.*, subd. 1(h).

<sup>27</sup> Joint Resolution for OA at Section I, ¶ 2.

The Township and City mutually agree and state that no alterations by the MBAU of the stated boundaries of the area designated for orderly annexation is appropriate.<sup>28</sup>

As provided by the Joint Resolution for OA and Minn. Stat. § 414.0325, the requested annexation of the Property must be approved.

### **III. Conclusion**

The terms of the Joint Resolution for OA and Minn. Stat. § 414.0325 permit the City to annex the Property at the request of the property owners. Therefore, the annexation of the Property to the City is **APPROVED**.

**J. P. D.**

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<sup>28</sup> *Id.* at Section I, ¶ 3.