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Knowing The Playing Field:
The basics of municipal incorporation

By John Steffenhagen

Mark Twain once quipped that it is wise to "buy land, because they're not making any more of it." Twain's homespun wisdom has found a definite place in the 21st century, as an ever-increasing population and development plans meet the hard reality of a limited inventory of developable land. The resulting pressures can be particularly problematic between townships and neighboring cities.

Fortunately, Minnesota law provides specific statutory benchmarks that govern the process of municipal incorporation, annexation or detachment. The benefit of statutory framework is that townships have a straightforward opportunity to consider the law and assess whether incorporation or orderly annexation makes sense.

FILING FOR INCORPORATION

Incorporation proceedings may be initiated by a resolution of a township board or by a petition signed by 100 or more property owners within the township's boundaries. Although either avenue is legally sufficient, some townships pursue both in order to demonstrate a unified front and broad-based support. The township must serve the clerk of each neighboring municipality and township with notice of its intent at least 30 days before submitting the petition or resolution to the state. After the 30-day period, the petition or resolution must be filed with the Office of Strategic and Long-Range Planning.

The case is then assigned to an administrative law judge and a prehearing conference is held within 30 to 60 days. The prehearing conference triggers the clock set by law which states that the final order regarding incorporation must be issued within one year after the initial prehearing conference. The administrative law judge usually holds a scheduling conference to address prehearing discovery, the expert for expert testimony and a hearing schedule. The one-year mandate to conclude the matter limits the court's ability to grant continuances.

The hearing is conducted much like a trial, although the statute does not provide the right to a jury. All witnesses are subject to cross-examination and the length of the hearing depends upon multiple factors, including the complexity of the issues and whether the request for incorporation is contested. After the hearing, the administrative law judge will issue findings of fact and an order. The parties have a right to appeal, although it is curtailed by the statute.

The statute governing municipal incorporation lists 13 factors for the administrative law judge to consider. Using these factors, the administrative law judge is charged with determining what course of conduct best serves the greater good. Since these factors have been specifically set by the Minnesota Legislature, the administrative law judge's final order will likely set forth an analysis of each of those factors.

The factors cover the practical issues related to municipal incorporation including the analysis of present and projected population, existing levels of governmental services, the fiscal impacts of incorporation and whether essential services can be economically delivered by the existing township government.

MAPPING THE PATH TO INCORPORATION

Most incorporation matters are determined long before the township and its attorney set foot before a judge. Sound planning can make incorporation seem like a logical, inevitable step in the progression and growth of a township. Therefore, some solid, common sense rules apply to townships looking to take the next step.

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Build bridges. The statute is geared to determine whether incorporation serves the best interests of the township, its figurative neighbors and the region. A township's chances of incorporation can be greatly enhanced by establishing and fostering cooperative, productive relationships with county and local units of government.

Take time to meet the criteria. The factors governing municipal incorporations cannot be accomplished overnight. Rather, a township's course of conduct over time is more compelling than hurry-up efforts to meet the statutory criteria.

Take the high road. Keep in mind that the judge already is charged with the difficult task of weighing 13 different factors regarding incorporation; so airing old, personal or perceived grievances against your municipal neighbors only makes that charge more difficult.

There is no cookie-cutter approach to municipal incorporation. Instead, the process is gradual, cooperative and inclusive. It helps to not only work with constituents, but also with planners and attorneys who have a track record helping townships achieve their aspirations. ■

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After More Than A Decade, Annexation Laws See Some Reform

By Julie Perrus

Amidst the ongoing battle between cities and townships to gain the upper hand in the boundary adjustment process, the Minnesota Legislature has made some important changes to Minnesota's annexation laws and has committed to reviewing the principles and practices of boundary adjustment. These changes will affect not only the process, but also the rights of landowners to utilize and/or develop their property.

Since 1992, when a controversial annexation amendment was added to a tax bill in the last hours of session, cities and townships have struggled to find a balance to the increasing urbanization occurring in many townships and the progressive growth of cities. As a former legislative staffer, I met each year with representatives of the cities and towns, as each introduced legislation in an attempt to tip the balance in their favor. As the debate intensified between cities desiring to expand freely and increase their tax base and towns attempting to hold onto a model of local government slowly disappearing in the populous areas of the state, many legislators were reluctant to address the issue, as they often represent both local government interests at the state capitol. In 2006, however, Representative Mark Olson, then chair of the Local Government Operations Committee, initiated a proposal that heralds limited changes to the boundary adjustment process. The changes were amended onto another municipal planning bill, H.F. 3302, which passed in the last days of the session.

The first of the reform measures included in the bill changes the notice requirements for cities. Townships have long argued that they are brought into the process too late for a meaningful discussion to occur. The new law requires that a city provide at least 30 days notice to the town clerk prior to submitting an annexation petition to the Director of the Office of Municipal Boundary Adjustments.

Additionally, a joint informational meeting to include all local governments affected by the proposed annexation must be held prior to the administrative hearing. The minutes and information provided from the meeting must be considered by the Administrative Law Judge when ruling on the annexation. Another change to the law requires that a municipality reimburse a town for all special assessments assigned by the township to the parcel, and any other portion of debt that the town can attribute to the property, in addition to a provision in current law, which allows the town to recoup its lost property taxes.

Two changes should prove more controversial. The first allows 120 acres of land abutting a city to be petitioned for annexation by a property owner once per year. Current law allows a city to declare a parcel annexed if it is 60 acres or less, thereby avoiding any contest by the township. There are no limits under current law regarding how often this can occur, which has created the potential for serial petitions, where large tracts of land are annexed through a series of 60 acre requests by the landowner. This provision was set to expire on July 1, 2007, but was made permanent during this year's session.

Annexation struggles are not only between towns and cities. Cities sometimes face off against each other, when a property owner decides that an address in a neighboring city may be more beneficial, particularly if it allows for timely access to utilities. The second controversial provision changes a statutory provision that allows a property owner to initiate proceedings for a detachment of their property from one city and its annexation to another. Previously, the property owner only had to submit a supporting resolution from one affected city to the Office of Municipal Boundary Adjustments. The Administrative Law Judge would then follow statutory criteria to assess the practicality of the request. The new law requires both cities to adopt resolutions supporting the landowner's petition, which severely limits a landowner's ability to leave a municipality that is, for example, unwilling or unable to provide city services to the property, and yet does not want to lose the tax base. This issue has played out in the cities of Gem Lake and Vadnais Heights, where over a dozen property owners have petitioned for detachment from Gem Lake, in favor of what they believe will be more flexible zoning and development conditions in Vadnais Heights. These cases should be settled by September of 2007.

Finally, the changes include the creation of a joint task force comprised of house and senate members, as well as representatives of city and township interests. The task force must report on its findings to the legislature by January 15, 2008, regarding a long-term solution to the annexation issues surrounding annexation. It has been fifteen years since the state has seen any major changes to this process, due to the protracted, emotional impasse between the cities and townships. Depending on the task force's recommendations, the 2008 legislative session may significantly change the relationship between these local governments in the future. ■

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