

EUREKA TOWNSHIP BOUNDARY PROTECTION STUDY: SUMMARY REPORT AND RECOMMENDATIONS

EUREKA TOWNSHIP, MINNESOTA

This document provides a summary of the work completed by Eureka Township's Planning Commission during the Boundary Protection Study and its recommendations to the Town Board.

DRAFT DECEMBER, 2016

TKDA Project Number 16266.000

BOUNDARY PROTECTION STUDY : EXECUTIVE SUMMARY AND RECOMMENDATIONS

Eureka Township's Board requested that the Planning Commission complete a study of Boundary Protection options and make its recommendations to the Board. The Board requested the study as concerns came forward during the development of the Township's 2040 Comprehensive Plan about the potential impacts of a regional sewer extension to serve Airlake Airport, which is located within the Township. The Township is concerned that the regional sewer extension to serve the airport may lead adjacent cities or landowners to annex portions of the Township including the airport and adjacent areas to the City of Lakeville. The Town Board and Planning Commission wanted to actively identify and analyze options to maintain the Township's current boundaries for the foreseeable future.

Eureka Township's Planning Commission worked with the Township's Attorney and Planner to identify and analyze several boundary protection options, including:

- Joint Powers Agreements for the provision of municipal services to uses located in Townships
- Municipal Incorporation
- Orderly Annexation Agreements between Townships and Cities
- Zoning Strategies designed to preserve boundaries

This report summarizes the information that the Planning Commission gathered and analyzed during the study, its findings, and its recommendations to the Town Board. The attachments include all of the meeting records and the key information and examples that the Commission reviewed.

The Planning Commission's recommendations include:

1. The Town Board should seek a Joint Powers Agreement with the City of Lakeville to address the potential extension of municipal sewer service to Airlake Airport that would include provisions that the Airport remain in the Township and permitting extension of municipal sewer and water services to the Airport.
2. The Town Board should begin discussions with the City of Lakeville soon regarding a Joint Powers Agreement. The Board should develop its set of criteria for the Joint Powers Agreement that will protect the Township's interests.
3. The Township should take the initiative to develop its long-term vision related to its boundaries. The vision should consider the Township's interest in maintaining its 36 square-mile area, and identify the tools it will use. This could include a consideration of municipal incorporation after 2040. The long-term vision could be discussed in the 2040

Comprehensive Plan so that neighboring communities and the Metropolitan Council understand the Township's interests and long-term vision as they develop local and regional plans.

4. The Township should begin discussions with the City of Farmington about the City's 2040 Comprehensive Plan, the proposed commercial development in the area near CSAH 50, and the City's plans for land use and infrastructure in the area near the northern border of Eureka Township in the near and longer-term.
5. The Township should evaluate an option to pennit "cluster" housing developments in portions of the Township, and whether this could be an option to protect its boundary from future annexation.
6. The Planning Commission will ask the Board to participate in a special joint meeting to discuss the Boundary Protection study findings and recommendations. The meeting will include the Township' Attorney and Planner.

Members of the Planning Commission included the following:

Nancy Sauber, Chair

Fritz Frana

Ralph Fredlund

Donovan Palmquist

Randy Wood

Staff included:

Chad Lemmons, Kelly and Lemmons, Township Attorney

Sherry Buss, TKDA, Township Planner

I. BOUNDARY PROTECTION OPTIONS - SUMMARY OF FINDINGS

A. JOINT POWERS AGREEMENT (JPA)

DEFINITION: A joint powers agreement is a contract between units of government in which one or both agree to perform a service, cooperate with or lend its powers to a joint effort.

EXAMPLES: The Planning Commission reviewed several examples of joint powers agreements between Townships and Cities that were created to manage the extension of municipal sewer and/or water services from a city to a use in a township, such as a school or residential subdivision. They heard comments from Township Board members involved in JPA's about the pros and cons of this boundary protection tool.

A JPA adopted by Baytown Township and the City of Bayport for the extension of municipal sewer and water services from Baypmi to serve the St. Croix Preparatory Academy, located in the Township, is included in the Attachments.

TASKS, TIMELINES, AND COSTS: Township and city representatives negotiate the terms of the JPA. An attorney for the town or the city may draft the JPA. The Town Board and City Council must approve the JPA. JPA 's for infrastructure extensions from cities to townships must be sent to the Metropolitan Council, and included in the Comprehensive Plan of each community. JPA's for infrastructure extensions into unserved areas are likely to require a Comprehensive Plan Amendment.

The JPA includes an identified service area, specific conditions about the design, construction, financing and maintenance of the infrastructure, the time period for the JPA, how it may be amended or terminated, and other conditions as negotiated between the township and city.

The cost of the JPA is typically attorney and engineering staff time to complete the agreement and Board member time to negotiate the agreement. The costs for this boundary protection tool are typically lower than those of the other three tools reviewed for this study.

ADVANTAGES FOR JPA'S FOR INFRASTRUCTURE SERVICES:

- When a city and township are willing to work together to create the JPA
- The length of time needed to negotiate a JPA and its cost are relatively low in comparison to other boundary protection options. The agreements are relatively easy to amend to include additional areas if desired by the township and city. JPA's typically have no end date, but do have conditions that permit termination of the agreement.
- The Township may benefit because the land area and use remain in the Township, and annexation can be avoided. The City can benefit because it will receive revenue from the

sale of the sewer and water services, and if the use that receives sewer and water services is a nonprofit or governmental use, it would not gain property tax revenues from annexing the property where the service is provided. If the use that is served pays property taxes and has no interest in becoming part of the city, it may benefit from lower township taxes.

- If the land use that receives services from the city is located on the boundary to the township, it may serve as a barrier to future annexation in that area.
- A township could try to include a condition in the agreement that the city agrees that it will not try to annex portions of the township during the term of the JPA. If the city does not have an interest in annexation, this may help to address concerns of township residents who fear annexation near the area where the infrastructure services will be extended.

LIMITATIONS OF JPAs:

- Requires a willing city and township. Typically used when both parties will benefit from the agreement.
- A JPA may not be a permanent solution to protecting a township boundary. JPAs do not prevent petitions for annexation from adjacent landowners that desire incorporation or prevent cities from seeking to annex portions of townships.

B. INCORPORATION

DEFINITION: Incorporation is a process prescribed in State law for creating a City from a township of government. The Municipal Boundary Adjustment Unit of the state Office of Administrative Hearings has authority over incorporations, as well as annexations, consolidations, and detachments.

EXAMPLES: The Planning Commission reviewed several examples of Townships that have incorporated as cities since 1990, including Scandia (New Scandia Township), Columbus (Columbus Township), and the City of Rice Lake (Gnesen Township, near Duluth). The process of incorporation was time-consuming in each case, and lasted for 2 years or longer. The process included completing an incorporation study that addressed the list of issues required to be evaluated for incorporation in statute, including a fiscal impacts study. In each case, the community needed to make its case for incorporation to the Municipal Boundary Adjustment Unit, which determines whether the incorporation will be approved.

TASKS, TIMELINES AND COSTS: Incorporation may be initiated by property owners or by a Township government by petition. The incorporation tasks in the examples reviewed included a public process in each community to get agreement on incorporation, and the development of the

petition and application to the Municipal Boundary Adjustment Unit and supporting materials to meet the statutory requirements for the application. The timeline in each of the examples reviewed was approximately 2 years. The costs of the incorporation process were between \$60,000 and \$150,000. The costs were largely related to work by consultants and attorneys to create all of the required submittals for the application for incorporation.

WHEN TO CONSIDER INCORPORATION:

- The Municipal Boundary Adjustment Unit must consider a list of items to determine whether to approve the petition for incorporation, including the present and projected population of the proposed city, land characteristics and development patterns, existing and proposed land use and transportation network, comprehensive plan, types and levels of governmental services, fiscal impacts, etc. The Township seeking annexation must make a strong case that incorporation would better serve the area than annexation to an adjacent city. The Municipal Boundary Adjustment Unit may deny the petition for incorporation if it concludes that residents of the area would be better served by annexation to a city rather than incorporation.
- Townships typically begin to consider incorporation as they approach a population of 5,000 because there are some financial advantages to being a city at that level, such as eligibility for State Aid funds for roadways. Columbus and Scandia had populations of about 3,800 at the time of incorporation. The costs associated with becoming a city may outweigh the benefits at lower population levels, but at 5,000 and higher there are some significant financial advantages for cities. Cities also have broader taxing authorities than townships.
- The Township may consider whether it has an interest in incorporation in the long term (after 2040), and discuss this in its comprehensive plan, to lay the groundwork for a potential incorporation. Many of the cities in Dakota County and in other parts of the Metro Area are former townships, and maintained the boundaries they had as a township after incorporation (Eagan, Apple Valley, Woodbury, etc.). Empire Township has done this in its Comprehensive Plan, and based on the goal in its Comp Plan, negotiated a condition in an orderly annexation agreement with Farmington that the City would not annex any more of the Township and would support Empire's future incorporation.
- The major advantage to considering incorporation in the long-term is the community's ability to determine its own identity and future, without the threat of incorporation.

CONCERNS RELATED TO INCORPORATION:

- The form of local government changes with incorporation. Townships generally have a more "direct" democracy through the annual meeting process than cities.

- Eureka Township would need to complete a fiscal study of potential impacts of incorporation to determine if the benefits to residents would outweigh the costs. For example: Dakota County requires a higher level of financial participation from cities than Townships in road projects. This is an example of a potential fiscal burden for the Township that could result from incorporation.
- Incorporation is a lengthy and potentially costly process, and the cost is higher if adjacent cities oppose the incorporation. The Township may need to have frank discussions with Lakeville and Farmington to gauge whether those cities would oppose incorporation.
- Incorporation may result in new responsibilities and needs for staff. Some communities have hired administrators, public works staff, or other staff after incorporation (such as Scandia), although not all communities have done that (City of Grant, which has a part-time clerk and no other employees).

C. ORDERLY ANNEXATION AGREEMENTS

DEFINITION: Annexation is the process by which an area within a township becomes part of a city. Orderly Annexation is one type of annexation in which an agreement between a city and a township determines how the process will occur. The process is often a phased annexation. The process is governed by Minnesota Statutes 414, and the state agency that governs all types of annexations is the Municipal Boundary Adjustment Unit.

EXAMPLES: The Planning Commission reviewed orderly annexation agreements from several communities, and comments from town board chairs and clerks about those processes, including the Chairs of Empire Township, Stillwater Township and the clerk from Rice Lake (formerly Gnesen Township).

Empire Township opposed two annexations by the City of Farmington and lost both battles, which resulted in high legal costs. The Township then initiated discussions with the City of Farmington to try to use a negotiated process to address boundary issues in the future. The Township and City negotiated an orderly annexation agreement in 2008 that included a condition that there will be no other annexations by the City, and that the City will not oppose Empire's incorporation as a city at an undetermined time after 2040.

Stillwater Township negotiated an orderly annexation agreement with the City of Stillwater after the Metropolitan Council proposed that portions of the Township be guided for urban development to accommodate growth pressures in Stillwater. The Township wanted to avoid the high legal costs and likely negative outcomes of opposing annexation. The Township negotiated a 20-year phased annexation that included conditions to protect Township residents, such as reducing tax impacts and limiting assessments, determining land uses in areas adjacent to the border, and creating a joint authority to manage land use and development during the phased

annexation process. The City also benefited by using the agreement to manage the speed of growth in the area.

While this orderly annexation agreement does not include a condition prohibiting future annexations, the City's existing sewer system does not have the capacity to serve additional areas in the Township, and the ability to expand the system is limited by environmental and topographic factors.

Rice Lake/Gnesen Township negotiated an orderly annexation agreement for a portion of the Township at the same time that the majority of the Township area incorporated as the City of Rice Lake. The orderly annexation agreement was for a portion of the Township where the City of Duluth had developed a city park. The City of Duluth was willing to not oppose the incorporation as long as they were able to annex the park area.

TASKS, TIMELINES, AND COSTS: The orderly annexation process varies in length based on the negotiations between the city and township to create a joint resolution. The process requires a public hearing. The resolution is submitted to the Municipal Boundary Adjustment Unit for a 30-day review period, but if the township and city agree, the MBAU may comment but does not need to approve the orderly annexation.

In the two examples reviewed in detail, the Cities' attorneys drafted the agreement, and the Township attorneys worked with the Boards to modify as needed.

WHEN TO CONSIDER ORDERLY ANNEXATION

- The Town Board Chairs interviewed noted that townships rarely win battles if cities are determined to annex portions of a township, and they can prove that it will be better for the areas to be part of the city. Therefore, if a township finds that a city is considering annexation, it may be advantageous to begin discussions toward an agreement, and identify the conditions to protect township residents during the process.
- The Township may be able to negotiate favorable terms for the Town and its residents if it participates in an orderly annexation agreement rather than a hostile annexation process.
- Orderly annexation can avoid the high legal costs of a contested process.
- Orderly annexation can help cities and townships understand each other's goals and intentions better, and may lead to a better working relationship on other issues of concern.

CONCERNS AND LIMITATIONS OF ORDERLY ANNEXATION

- Both town board chairs noted that the process requires a willing city and township to negotiate a joint resolution.

- An orderly annexation agreement may not prevent future annexations. Some townships have been able to negotiate terms in the agreement to prevent future annexations.

D. ZONING STRATEGIES TO PROTECT BOUNDARIES

DEFINITION: Several townships suggested some zoning strategies they have used that have resulted in discouraging annexation along their boundaries with cities. The strategies focus on the location of land uses within the township.

EXAMPLES: Examples of land use strategies cited by Townships to protect boundaries include the following:

- Locate uses that are unattractive to cities because they do not generate property tax revenues along township boundaries with cities—such as schools and other governmental uses.
- Permit the development of "cluster" subdivisions with smaller lot sizes and large areas of permanently-dedicated open space adjacent to boundaries with cities. Lot sizes in these developments are typically 1-5 acres in size. The open space areas cannot be subdivided in the future, and most developers are not willing to purchase multiple small parcels with existing single family homes for redevelopment.
- Permit the development of smaller lot sizes (5 acres or less) along boundaries with cities as a dis-incentive to annexation. It is difficult to serve these lots with municipal sewer and water services and very costly to redevelop these areas with urban densities.

The Town Board Chairs that were interviewed also warned that locating zoning districts that permit commercial or industrial uses adjacent to boundaries between townships and cities can attract city interest in annexation, and may suggest to the Municipal Boundary Adjustment Unit that the future of the area is likely to be urban and would benefit from the extension of municipal sewer and water services and annexation to the adjacent city.

TASKS, TIMELINES AND COSTS: The zoning strategies suggested could be completed 1) if a government or institutional use were approved under existing zoning or 2) through amending the zoning ordinance and completing a Comprehensive Plan amendment. The process would require discussions with Township residents and at least six months to update the ordinance and complete the Comp Plan amendment. The costs would include Planning Commission or staff time to develop the zoning amendments, map changes, and Comp Plan amendment form and submittals to the Metro Council. Since the Township is currently classified as Agricultural in the Regional Development Framework, which requires minimum lot sizes of 1 dwelling unit per 40 acres, it is expected that a change would require some significant discussions with the Metropolitan Council to make a change in its policies.

WHEN TO EMPLOY THE ZONING OPTIONS:

- The zoning options to locate uses that do not generate property taxes on boundaries can be employed when one of these uses expresses interest in locating within the Township.
- The Township has heard some interest from residents in using cluster-type development. It could study whether this is a good fit in the Township. The Metropolitan Council's current policies permit "cluster" development to protect agricultural or environmental resources in Agricultural communities, as long as the overall densities in the community are still approximately 1 unit per 40 acres.

CONCERNS AND LIMITATIONS OF THE ZONING STRATEGIES:

- The strategies to allow smaller lot sizes may not be consistent with the Township's vision for its future and current goals to remain Agricultural in character. It would also require significant time and effort to convince the Metropolitan Council to change regional policies to permit lot sizes of five acres and smaller in the Township. If the Township proposes to use the strategy to emphasize its Agricultural character as a way to discourage annexation, the small lot strategy would not be consistent with that goal.
- If the Township determines that it wants to identify some areas for future commercial and industrial development, it should consider the comments that locating such areas near boundaries with cities may encourage future annexation of those areas.

II. SUPPORTING DOCUMENTS

The Planning Commission reviewed a variety of materials to complete the Boundary Protection Study. The documents are attached, and include the following:

1. . Staff repolis and Planning Commission meeting summaries from November 9 and December 6, 2016
2. League of Minnesota Cities Handbook sections on Incorporation and Annexation
3. Copy of JPA between Baytown Township and the City of Bayport for extension of municipal water and sewer services to serve land uses within the Township
4. Copy of Orderly Annexation Agreement between Empire Township and City of Farmington
5. Copy of Orderly Annexation Agreement between Stillwater Township and City of Stillwater
6. Lists of Minnesota Incorporations since 1990
7. List of Dakota County Annexations since 1960's