

CITY OF NORTHFIELD, MINNESOTA
CITY COUNCIL RESOLUTION 2010-079

A RESOLUTION BY THE MAYOR AND CITY COUNCIL OF THE CITY OF
NORTHFIELD, MINNESOTA NOTIFYING WATERFORD TOWNSHIP OF EXPIRATION
OF 1980 JOINT RESOLUTION AND TAX REIMBURSEMENT PAYMENTS

WHEREAS, the City of Northfield (the "City") and Waterford Township (the "Township") previously entered into a joint resolution for orderly annexation, dated April 21, 1980 (the "1980 Joint Resolution"); and

WHEREAS, the terms and conditions contained in the 1980 Joint Resolution exclusively provided for the immediate annexation of a single 20-acre parcel, known as the Sheldahl Property, to the City, which annexation was completed in 1980; and

WHEREAS, the City has since 1980 and directly related to the annexation of the Sheldahl Property made annual tax reimbursement payments to the Township, which has been a period of over 30 years and has resulted in total tax reimbursement payments to the Township of \$73, 906; and

WHEREAS, since the 20-acre Sheldahl Property was annexed in 1980 all the terms and conditions contained the 1980 Joint Resolution have since been fulfilled in their entirety, including any and all required and legally authorized tax reimbursement payments to the Township for the above-referenced annexation; and

WHEREAS, the City Attorney was directed to review the 1980 Joint Resolution and research its continuing enforceability and effectiveness in relation to governing law; and

WHEREAS, the results of this research are set forth in the legal opinion of the City Attorney dated January 12, 2010, which is attached hereto as Attachment 1 and revealed that the 1980 Joint Resolution is no longer in force and effect and that no additional tax reimbursement payments to Waterford Township can be made related to the annexation of the Sheldahl Property because there is no statutory authority for the continuation of such tax reimbursement payments; and

WHEREAS, in light of the expiration of the 1980 Joint Resolution, the City Council of the City of Northfield and the Township Board of Supervisors of Waterford Township have engaged this year in cooperative discussions with respect to mutual growth issues and the possible development of a new joint resolution for orderly annexation to replace the 1980 Joint Resolution, but such discussions have not yet resulted in an agreement; and

WHEREAS, the Northfield City Council appreciates the Township's willingness to meet and discuss such matters with the City Council; and

WHEREAS, the Northfield City Council wishes to continue cooperative and collaborative discussions with Waterford Township in the future on issues of mutual interest, which may

include continuing discussions involving development of a new orderly annexation agreement to replace the expired 1980 Joint Resolution, among others.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF NORTHFIELD, MINNESOTA THAT:

1. The legal opinion of the City Attorney dated January 12, 2010 (Attachment 1), which is incorporated herein by reference and found that the Joint Resolution for Orderly Annexation between Waterford Township and the City of Northfield dated April 21, 1980 is expired and no longer in force, effect or binding upon either the City or Township, is adopted.
2. Since the above-referenced 1980 Joint Resolution has expired and is of no further force or effect or binding on the City or Township, there is no legal authority for the City to make any additional tax reimbursement payments to Waterford Township in accordance with the expired 1980 Joint Resolution and as a result no future tax reimbursement payments shall be made to the Township.
3. City staff is hereby directed to provide notice hereof to the Township along with a copy of this resolution and express that the Northfield City Council desires to continue to work with and have open dialog with the Township in the future on matters of mutual interest and benefit, which may include among others such issues cooperative land use planning, development of a new orderly annexation agreement, transportation corridors and ordinance development.

PASSED by the City Council of the City of Northfield on this 5th day of October, 2010.

ATTEST:



City Clerk

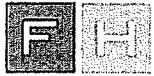


Mayor

VOTE: Y ROSSING Y BUCKHEIT Y DENISON A POKORNEY
Y POWNELL Y VOHS Y ZWEIFEL

ATTACHMENT 1

Memorandum dated January 12, 210 from Christopher M. Hood, City Attorney, Flaherty & Hood, P.A., to Joel Walinski, City Administrator, City of Northfield, Re: 1980 Joint Resolution for Orderly Annexation - Waterford Township



FLAHERTY | HOOD P.A.

MEMORANDUM

To: Joel Walinski, City Administrator

From: Christopher M. Hood

VIA EMAIL

Date: January 12, 2010

Re: Corrected Memorandum

Please find attached a corrected memorandum regarding my legal opinion with respect to the 1980 Joint Resolution for Orderly Annexation between the City of Northfield and Waterford Township. Specifically, the December 2008 and total amount of reimbursement listed in the December 31, 2009 memo were incorrect and were based on a prior 2008 estimate for the year and an estimated total reimbursement made to the Township. Such amounts have recently been more accurately determined by the Finance Department. The corrections to the December 31, 2009 memorandum are contained on page 3 at paragraphs 11 and 12. No other corrections or changes have been made and the December 31, 2009 memorandum is hereby superseded in its entirety by the attached memorandum, dated January 12, 2010.

CMH

Attachment



MEMORANDUM

To: Joel Walinski, City Administrator

From: Christopher M. Hood VIA EMAIL

Date: January 12, 2010

Re: 1980 Joint Resolution for Orderly Annexation – Waterford Township

The following memorandum is in response to your request for a legal opinion regarding the operative effect, if any, of the 1980 Joint Resolution for Orderly Annexation between the City of Northfield (the "City") and Waterford Township (the "Township"). This memorandum is a brief response to your inquiry discussing the issues raised and the applicable law.

Question Presented

Is the April 21, 1980 Joint Resolution for Orderly Annexation between the City and Township (the "1980 Joint Resolution") still in effect such that the City is bound to the terms contained therein, including its provision for continued annual tax reimbursement and its prohibition of future annexations in the Township without the Town Board's prior approval?

For the reasons discussed below, the answer to the above question is that the 1980 Joint Resolution has expired, is not enforceable and has no binding effect upon the City or the Township.

Basic Terms of the 1980 Joint Resolution

1. Effective date of the 1980 Joint Resolution – April 21, 1980.
2. Purposes of the 1980 Joint Resolution:
 - a. Immediate annexation of a parcel 20 acres in size on behalf of the Sheldahl Company for purposes of industrial development.
 - b. City and Township "desire to accommodate growth in the most orderly fashion."
 - c. The parties agree that the agreement is "beneficial to both parties from the standpoint of orderly planning and orderly transition of form of government within the area proposed to be annexed as well as providing the guidelines under which this annexation is to take place."

3. Other terms:

- a. No future annexations in the Township without the prior agreement of the Township Board.
- b. Tax reimbursement of \$675 per year (amount variable and adjusted each year) as authorized in special legislation for an unspecified number of years.¹

Analysis of 1980 Joint Resolution

The following are some observations, findings and conclusions regarding the 1980 Joint Resolution establishing that the 1980 Joint Resolution does not remain operative and in effect today:

1. The 1980 Joint Resolution is now approximately 30 years old and contains no provision for termination.
2. There are no provisions in the 1980 Joint Resolution for accomplishing future annexations in the Township.
3. The only area identified and designated for orderly annexation in the 1980 Joint Resolution was the 20 acre Sheldahl Company property.
4. The governing statutes discussed in detail below require that orderly annexation areas, which are the subject of immediate and/or future annexations, be expressly described in any joint resolutions for orderly annexation in addition to stating the reasons for designation of the described orderly annexation area. In this case the only designated area described in the 1980 Joint Resolution is the 20 acre Sheldahl property. No other orderly annexation area is described, identified and designated for orderly annexation in the 1980 Joint Resolution. The 1980 Joint Resolution fails to meet the required statutory requirements for a joint resolution for orderly annexation with respect to any other areas of the Township, except the Sheldahl property. The 1980 Joint Resolution fails to meet this most basic statutory standard for a valid orderly annexation agreement. It is therefore unenforceable under the governing statute.
5. All conditions in the 1980 Joint Resolution for annexation of the Sheldahl property have been met long ago since the annexation was ordered in 1980. The 1980 Joint Resolution appears to have been completed in this regard since no other areas are properly designated for future orderly annexation in accordance with Minn. Stat. § 414.0325.
6. The remainder of the Township was not designated in the Joint Resolution for future orderly annexation and therefore does not meet the statutory requirements for identification, designation and description. Further, no reasons are provided as required by statute for designation of orderly annexation areas other than for the Sheldahl property. As a result, there are no other provisions in the 1980 Joint Resolution to accomplish future annexations in the Township, except the statutorily unenforceable statement that any contemplated annexations in the Township must be first agreed upon by the Waterford Town Board.
7. No provision in the 1980 Joint Resolution provides that it will provide the exclusive means of annexation in the Township in the future even if it could be construed to be still

¹ See 1981 Laws of Minnesota, c. 18 (approved April 3, 1981).

in effect, which it cannot. Thus, the provisions of Chapter 414 would apply to future annexations in the Township without limitation notwithstanding the 1980 Joint Resolution.

8. The 1980 Joint Resolution expired following the completion of the one contemplated 20-acre annexation contained therein.
9. The Office of Administrative Hearings (OAH), the state agency with jurisdiction over annexation matters no longer has jurisdiction over the 1980 Joint Resolution since no other areas have been designated for future annexation and the purpose of the document to accomplish the Sheldahl annexation has been completed.
10. The City has been making tax reimbursement payments to the Township since the 1980 annexation of the Sheldahl property.
11. The most recent tax reimbursement amount paid by the City to the Township was \$3,197 (this amount changes somewhat every year) made in December 2009.
12. The City has paid the Township \$73,906 over the past 30 years in tax reimbursement for the 20 acre annexation.
13. The operative statute restricted such tax reimbursement payments to six years following the date of annexation of the Sheldahl property. As a result, there is no legal authority for the City to continue to make such payments today.
14. The City has not completed any annexations in Waterford Township since the Sheldahl annexation in 1980.
15. In 1980, state law did not allow cities to make tax reimbursement payments to a township following an orderly annexation.
16. There is a Northfield City Council Resolution dated January 26, 1981 asking the state legislature to adopt special legislation to allow the City to make annual tax reimbursement payments to the Township as provided in the 1980 Joint Resolution.
17. The State Legislature approved the City's tax reimbursement special legislation on April 3, 1981.
18. The State Legislature approved general legislation enacting Minn. Stat. § 414.036 authorizing cities to make tax reimbursement payments to townships on May 13, 1981.
19. There is a Northfield City Council Resolution, dated July 6, 1981, approving the special legislation to allow the annexation payments as provided in the 1980 Joint Resolution.
20. The tax reimbursement payments as contemplated in the 1980 Joint Resolution specify no end date and the special legislation simply authorizes the City to make payments in accordance with an orderly annexation agreement and the conditions stated therein.
21. The special legislation does not state any term for such payments, it merely authorizes annual payments, but states that the underlying orderly annexation proceeding be in accordance with Minnesota Statutes, Chapter 414, which are the governing annexation statutes.
22. State statute as contained in Minnesota Statutes, Chapter 414 governs municipal boundary adjustments and preempts and supersedes in all respects the City's special legislation on the subject of tax reimbursement.
23. For the reasons discussed below, the City's special legislation had no operative effect as it was superseded by the enactment of Minn. Stat. § 414.036 and therefore the six year limitation on reimbursement payments contained in section 414.036 applied to the 1980 Joint Resolution or this provision of the 1980 Joint Resolution is void and of no effect as

it was entered into prior to the City and Township ever having legal authority to make such payments.

Governing Law – State Statutes

As background for the above findings and conclusions regarding the operative effect of the 1980 Joint Resolution, the following statutes contained in Minnesota Statutes, Chapter 414 (the annexation statutes) are relevant.

- **Joint Resolutions for Orderly Annexation – Section 414.0325**

Minn. Stat. § 414.0325 (2009), which applies to joint resolutions for orderly annexation, currently provides in part as follows:

“Subdivision 1. **Initiating the proceeding.** (a) One or more townships and one or more municipalities, by joint resolution, may designate an unincorporated area as in need of orderly annexation. ...

(b) 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. Land described as a designated area is not, by virtue of being so described, considered also to be annexed for purposes of this chapter.

(c) The joint resolution will confer jurisdiction on the chief administrative law judge over annexations in the designated area and over the various provisions in said agreement by submission of said joint resolution to the chief administrative law judge.

(d) *The resolution shall include a description of the designated area and the reasons for designation.*

(e) *Thereafter, an annexation of any part of the designated area may be initiated by:*

(1) *submitting to the chief administrative law judge a resolution of any signatory to the joint resolution; or*

(2) *the chief administrative law judge.*

...

(g) 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 chief administrative law judge may review and comment, but may not alter the boundaries.

(h) 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 chief administrative law judge is necessary, the chief administrative law judge may review and comment, but shall, within 30 days, order the annexation in accordance with the terms of the resolution.

...

[Emphasis added.]

The above statute clearly states that the following components are required for a joint resolution for orderly annexation to be valid:

1. A city and township must be parties to the joint resolution.
2. The joint resolution must identify and designate the area the parties believe is appropriate for either immediate or future orderly annexation.
3. The joint resolution shall include a specific description of the area designated for either immediate or future annexation and the reasons for such designation.
4. The joint resolution, through submission to the state, confers jurisdiction over its terms and any annexations in the designated area to the Office of Administrative Hearings (the "OAH").
5. If the joint resolution contains the statutory 30 day review and comment language from the statute, OAH's jurisdiction is limited and no contested case hearing process is allowed to accomplish an annexation made in accordance with the joint resolution. However, if the joint resolution does not contain such language, as the 1980 Joint Resolution does not, then a contested case hearing before the OAH is required for accomplishing future annexations assuming *arguendo* the joint resolution was still in force and effect, which it is not.
6. Annexation of any part of the designated area in a joint resolution may be initiated by submitting to the chief administrative law judge a resolution of any signatory to the joint resolution. Thus, the City could submit an annexation within the designated area notwithstanding a provision in the agreement to the contrary that requires prior town board approval assuming *arguendo* the joint resolution was still in force and effect, which it is not.

It should be noted that the 1980 law governing the 1980 Joint Resolution mirrors the above requirements with the exception of not containing the 30 day review and comment jurisdiction language.² It should be further noted that the 1980 law did not contain subdivision 1, paragraphs (b) and (c). Prior law also contained a provision allowing property owner petitioned annexation by ordinance notwithstanding the existence of a joint resolution for orderly annexation,³ which provision was subsequently repealed in 1997 even though the provision was upheld in a 1994 Court of Appeals case.⁴

² Minn. Stat. § 414.0325 (1980), subdivision 1. "One or more townships and one or more municipalities, by joint resolution, may *designate an unincorporated area as in need of orderly annexation* and may confer jurisdiction on the board over annexations in the designated area and over the various provisions in said agreement by submission of said joint resolution to the executive director. *The resolution shall include a description of the designated area.* Thereafter, an annexation of any part of the designated area may be initiated by submitting to the executive director a resolution of any signatory to the joint resolution or by the board of its own motion. Whenever the pollution control agency or other state agency pursuant to sections 115.03, 115.47, 115.49, or any law giving a state agency similar powers, orders a municipality to extend a municipal service to a designated unincorporated area, such an order will confer jurisdiction on the Minnesota municipal board to consider designation of the area for orderly annexation." [Emphasis added.]

³ Minn. Stat. § 414.033, subd. 2a previously provided that: "[I]f land is owned by a municipality or if all of the landowners petition for annexation, and the land is within an existing orderly annexation area as provided by section 414.0325, then the municipality may declare the land annexed."

⁴ *La Crescent Township v. City of La Crescent*, 515 N.W.2d 608 (Minn.Ct.App.1994).

As concluded above, applying either the 1980 or 2008 statutes to the 1980 Joint Resolution, one can logically find that it does not meet the statutory requirements stated in items 2, 3 and 4 above in order for the 1980 Joint Resolution to remain in force and effect today for future annexations in the Township. Thus, the 1980 Joint Resolution has expired, is not enforceable and has no binding effect upon the City or the Township

- **Tax Reimbursement**

Minn. Stat. § 414.036 (2009), which applies to tax reimbursements in joint resolutions for orderly annexation, currently provides as follows:

“Unless otherwise agreed to by the annexing municipality and the affected town, when an order or other approval under this chapter annexes part of a town to a municipality, the order or other approval must provide a reimbursement from the municipality to the town for all or part of the taxable property annexed as part of the order. The reimbursement shall be completed in substantially equal payments over not less than two nor more than eight years from the time of annexation. The municipality must reimburse the township for all special assessments assigned by the township to the annexed property, and any portion of debt incurred by the town prior to the annexation and attributable to the property to be annexed but for which no special assessments are outstanding, in substantially equal payments over a period of not less than two or no more than eight years.”

The legislative history of the above provision is particularly noteworthy in this case because the legislation authorizing city tax reimbursement to a township for an orderly annexation was enacted by the Legislature in 1981, the same year that the City sought special legislation authorizing it to make annual payments to the Township as part of the 1980 Joint Resolution, and the year following the adoption of the 1980 Joint Resolution on April 21, 1980.

The 1981 version of section 414.036 provided as follows:

“When a board order under section 414.0325 annexes part of a town to a municipality, the orderly annexation agreement between the town and municipality *may provide a reimbursement from the municipality to the town for all or part of the taxable property annexed* as part of the board order. *The reimbursement shall be completed in substantially equal payments over not less than two nor more than six years from the time of annexation.*” (Approved May 13, 1981) [Emphasis added.]

Interestingly, the language from the 2009 statute, which provides that “[u]nless otherwise agreed to by the annexing municipality and the affected town” is not contained in the 1981 statute. The governing statute in fact allows payments from a city to a township only in substantially equal payments, which must cease no more than six years from the date of annexation. Clearly, this provision of the statute requires any tax reimbursement to the Township with respect to the 1980 Joint Resolution to cease after six years.

It would appear based on the foregoing that in 1980 when the 1980 Joint Resolution was adopted and executed, there was no provision for tax reimbursement by a city to a township as provided in the 1980 Joint Resolution. There was no legal authority for this provision in the 1980 Joint Resolution. The term was therefore illegal since a city may only undertake such actions as it is legally authorized to perform by statute or charter. This fact must have been what lead the City to seek special legislation in 1981 to allow it to make the annual payments to the Township as agreed upon in the 1980 Joint Resolution.

However, the Legislature also enacted the above-quoted general law provision, section 414.036, authorizing limited tax reimbursement that was applicable to all municipalities and townships in the state, including Northfield and Waterford. The special law sought by the City was approved by the Legislature on April 3, 1981. The general law, section 414.036, was approved by the Legislature on May 13, 1981. Since the special law merely authorized the City to make tax reimbursement payments because the City had no prior statutory authority to do so through the 1980 annexation statutes and because the general law is more specific, is mandatory in application and was intended by the Legislature to apply to all cities and townships in the state, the general law superseded the special legislation in all respects making the special law moot and of no effect, notwithstanding the fact that the City later approved the special legislation on July 6, 1981.⁵

Thus, the 1981 special legislation is of no operative effect and the 1980 Joint Resolution is governed by the 1981 version of section 414.036 if one could construe the law retroactively to apply to an agreement that existed before the law was actually enacted.⁶

Further, the governing law as contained in section 414.036 (1981) provided specifically that "[t]he reimbursement shall be completed in substantially equal payments over not less than two nor more than six years from the time of annexation." Annexation occurred in 1980. As a result, the law expressly limits the payments that can be made by the City to the Township under an orderly annexation agreement to equal payments made over a period not to exceed six years. Payments should have ceased in 1986. There is no legal authority for the City to continue to make tax reimbursement payments to the Township for the Sheldahl property annexation.

⁵ See Minn. Stat. § 645.39, which provides that: "When a law purports to be a revision of all laws upon a particular subject, or sets up a general or exclusive system covering the entire subject matter of a former law and is intended as a substitute for such former law, such law shall be construed to repeal all former laws upon the same subject. When a general law purports to establish a uniform and mandatory system covering a class of subjects, such law shall be construed to repeal preexisting local or special laws on the same class of subjects." See also Minn. Stat. § 645.16, which provides in part that: "[t]he object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions."

⁶ See *La Crescent Township v. City of La Crescent*, 515 N.W.2d 608, 609-10 (Minn.Ct.App.1994) ("Municipalities cannot limit the power of the legislature over annexation because the legislature preempted that field by adopting Chapter 414. *Independent Sch. Dist. No. 700 v. City of Duluth*, 284 Minn. 279, 289, 170 N.W.2d 116, 122 (1969); *In re City of Watertown*, 375 N.W.2d 582, 584 (Minn.App.1985).")

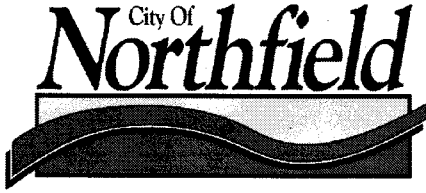
o Recommendation

Based on the foregoing, I recommend that the City stop any further tax reimbursement payments to the Township based on the 1980 Joint Resolution as such payments are not authorized by law. With respect to future annexations in Waterford Township, the City should move forward with consideration of such matters pursuant to governing ordinance and state statute without consideration of the 1980 Joint Resolution as it is not relevant and does not have any operative effect. The City Council may want to consider, at this time or in the future, approaching Waterford Township regarding the development a long-term orderly annexation process to guide future growth, development and municipal services in the Township.

Conclusion

I hope that the foregoing is helpful regarding your review of the issues presented. If you need further assistance, please contact me at your convenience.

CMH/rs



Regular Agenda Item: # 6

Date of City Council Meeting:

October 05, 2010

To: Mayor and City Council

From: Tim Madigan, Interim City Administrator

Subject: Waterford Township Payment

Attached is Resolution 2010-079, which formalizes the decision of the City Council to discontinue payments to Waterford Township related the 1980 annexation agreement between the City and the Township based on the legal opinion (dated January 12, 2010) of Chris Hood, City Attorney. Council member Buckheit has requested the City Council take formal action on the issue.

Northfield City Council Work Session Notes
Tuesday, September 14, 2010 – 7:00 PM
Northfield City Hall

PRESENT: Mayor Mary Rossing, Council Members Kris Vohs (arrived at 7:45 p.m.), Jim Pokorney, Erica Zweifel, Rhonda Pownell, Betsey Buckheit, Interim City Administrator Tim Madigan, staff, media and interested citizens

1. Review of Key Terms of New Joint Orderly Annexation Agreement with Waterford Township

The consensus of the Council was to send a letter to the Waterford Township stating the council will be reviewing the annexation agreement in 2011 and studying future growth areas. Chris Hood, City Attorney stated the 1980 annexation agreement is void and the City does not have the authority to make further payments to Waterford Township.

2. Review of Bridgewater Township response to Prawer/Gill Annexation Request

The consensus of the Council was to send a letter to the landowners who requested annexation and to Bridgewater Township with an update on the Council's discussion. The issue will be placed on the council's work plan for 2011.

3. Welcome Center Task Force Update

Jim Pokorney and Rhonda Pownell reported on the work of the task force. The council reviewed a draft policy statement on a community based Welcome Center. The Council agreed with the policy, but there was a difference of opinion on the dollar amount for possible City financial involvement. This item will be on a future work session agenda.

4. Discussion on Department Reorganization

The Council was comfortable with supporting the implementation of the proposed reorganization by adoption of the plan as presented by the Interim City Administrator. The Council asked for a review of the roles of staff liaisons to boards and commissions.

The meeting adjourned at 9:25 p.m.