

We would propose the following.

1. Payment in full of past payments and interest currently due.
\$28,744.68

The average of the last 5 years payments that are due. \$2,872.83*
Times 25 years.

Example:

| | |
|---------------------------------------|---------------------------|
| Average of payments due = \$2,872.83* | |
| | <u> X 25 years</u> |
| | \$71,820.75 |
| | + \$28,744.68 |
| Total | \$100,565.43 |

In exchange for payments made yearly in perpetuity.

* Example only

2. We would also enter into a new Orderly Annexation agreement with the following understanding.

Any annexation would have to be agreed upon by both parties and would adhere to the accompanying Annexation Standards adopted by the Waterford Town Board on 5/14/2010.

Annexation Standards

Is annexation in the best interest of the subject area?

Is annexation necessary to protect the health, safety, and welfare of subject area?

Will annexation result in a significant increase in services to subject area?

Will agricultural land and the environment be protected in the subject area?

Will the value of benefits of the subject area exceed the increase in property taxes and fees?

Will the annexation result in undue hardship to the citizens of the subject area?

Does the proposed annexation fit within the comprehensive plan of the subject area?

**Adopted unanimously by Resolution June 14th, 2010
Waterford Town Board**

414.0325 ORDERLY ANNEXATION IN DESIGNATED UNINCORPORATED AREA.

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. One or more municipalities, by joint resolution with the county, may designate an unincorporated area in which there is no organized township government 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.

(f) Whenever a state agency, other than the pollution control agency, orders a municipality to extend a municipal service to an area, the order confers jurisdiction on the chief administrative law judge to consider designation of the area for orderly annexation.

(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.

Subd. 1a. **Electric utility service notice.** At least 60 days before a petition is filed under this section or section 414.033, the petitioner must notify the municipality that the petitioner intends to file a petition for annexation. At least 30 days before a petition is filed for annexation, the petitioner must be notified by the municipality that the cost of electric utility service to the petitioner may change if the land is annexed to the municipality. The notice must include an estimate of the cost impact of any change in electric utility services, including rate changes and assessments, resulting from the annexation.

Subd. 1b. **Notice of intent to designate an area.** At least ten days before the municipality or township adopts an orderly annexation agreement, a notice of the intent to include property in an orderly annexation area must be published in a newspaper of general circulation in both the township and municipality. The notice must clearly identify the boundaries of the area proposed to be included in the orderly annexation agreement. The cost of providing notice must be equally divided between the municipality and the township, unless otherwise agreed upon by the municipality and the township. This subdivision applies only to the initial designation to include property in an orderly annexation area subject to the orderly annexation

agreement, or any expansion of the orderly annexation area subject to the agreement, and not to any subsequent annexation of any property from within the designated area. This subdivision also does not apply when the orderly annexation agreement only designates for immediate annexation property for which all of the property owners have petitioned to be annexed.

Subd. 2. Hearing time, place. Upon receipt of a resolution for annexation of a part of the designated area, the chief administrative law judge shall set a time and place for a hearing in accordance with section 414.09.

Subd. 3. Relevant factors, order. (a) In arriving at a decision, the chief administrative law judge shall consider the factors in section 414.031, subdivision 4.

(b) Based upon factors in section 414.031, subdivision 4, the chief administrative law judge may order the annexation:

(1) on finding that the subject area is now or is about to become urban or suburban in character and that the annexing municipality is capable of providing the services required by the area within a reasonable time; or

(2) on finding that the existing township form of government is not adequate to protect the public health, safety, and welfare; or

(3) on finding that annexation would be in the best interests of the subject area.

(c) The chief administrative law judge may deny the annexation if it conflicts with any provision of the joint agreement.

(d) The chief administrative law judge may alter the boundaries of the proposed annexation by increasing or decreasing the area so as to include that property within the designated area which is in need of municipal services or will be in need of municipal services.

(e) If the annexation is denied, no proceeding for the annexation of substantially the same area may be initiated within two years from the date of the denial order unless the new proceeding is initiated by a majority of the area's property owners and the petition is supported by affected parties to the resolution.

(f) In all cases, the chief administrative law judge shall set forth the factors which are the basis for the decision.

Subd. 4. Effective date of annexation. The chief administrative law judge's order shall be effective upon the issuance of the order or at such later time as is provided in the order.

Subd. 4a. Copy to county auditors. A copy of the annexation order must be delivered immediately by the chief administrative law judge to the appropriate county auditors.

Subd. 4b. Timing for tax levy. For the purposes of taxation, if the annexation becomes effective on or before August 1 of a levy year, the municipality may levy on the annexed area beginning with that same levy year. If the annexation becomes effective after August 1 of a levy year, the town may continue to levy on the annexed area for that levy year, and the municipality may not levy on the annexed area until the following levy year.

Subd. 5. Planning in orderly annexation area. (a) An orderly annexation agreement may provide for the establishment of a board to exercise planning and land use control authority within any area designated as an orderly annexation area pursuant to this section, in the manner prescribed by section 471.59. The

orderly annexation agreement may also delegate planning and land use authority to the municipalities or towns or may establish some other process within the orderly annexation agreement to accomplish planning and land use control of the designated area.

(b) A board or other planning authority designated or established pursuant to an orderly annexation agreement shall have all of the powers contained in sections 462.351 to 462.364, and shall have the authority to adopt and enforce the State Fire Code promulgated pursuant to section 326B.02, subdivision 5.

(c) The orderly annexation agreement may provide that joint planning and land use controls shall apply to any or all parts of the area designated for orderly annexation as well as to any adjacent unincorporated or incorporated area, provided that the area to be included shall be described in the joint resolution.

(d) If the orderly annexation agreement does not provide for joint planning and land use control, delegate planning and land use control to the municipalities or towns, or establish some other process for planning and land use authority, the following procedures shall govern:

(1) if the county and townships agree to exclude the area from their zoning and subdivision ordinances, the municipality may extend its zoning and subdivision regulations to include the entire orderly annexation area as provided in section 462.357, subdivision 1, and section 462.358, subdivision 1; or

(2) if the county and township do not agree to such extraterritorial zoning and subdivision regulation by the municipality, zoning and subdivision regulation within the orderly annexation area shall be controlled by a three-member committee with one member appointed from each of the municipal, town, and county governing bodies.

(e) The committee under paragraph (d), clause (2), shall:

(1) serve as the "governing body" and "board of appeals and adjustments," for purposes of sections 462.357 and 462.358, within the orderly annexation area; and

(2) have all of the powers contained in sections 462.351 to 462.364, and the authority to adopt and enforce the State Fire Code promulgated pursuant to section 326B.02, subdivision 5.

Subd. 6. Validity, effect of orderly annexation agreement. An orderly annexation agreement is a binding contract upon all parties to the agreement and is enforceable in the district court in the county in which the unincorporated property in question is located. The provisions of an orderly annexation agreement are not preempted by any provision of this chapter unless the agreement specifically provides so. If an orderly annexation agreement provides the exclusive procedures by which the unincorporated property identified in the agreement may be annexed to the municipality, the municipality shall not annex that property by any other procedure.

History: 1978 c 705 s 14; 1Sp1981 c 4 art 1 s 171,172; 1982 c 424 s 116; 1983 c 18 s 1; 1988 c 719 art 5 s 84; 1989 c 329 art 13 s 20; 1Sp1989 c 1 art 2 s 11; 1991 c 291 art 12 s 23; 1992 c 556 s 4; 1994 c 511 s 3; 1996 c 303 s 10-12; 1997 c 202 art 5 s 2; 2002 c 223 s 7; 2002 c 236 s 1; 2005 c 136 art 9 s 14; 2006 c 270 art 2 s 6,7; 2007 c 90 s 1; 2007 c 140 art 3 s 6; art 13 s 4; 2008 c 196 art 1 s 10-12; art 2 s 15

State of Minnesota
St. Louis County

District Court
Sixth District

Court File Number: **69VI-CV-12-1190**

Case Type: Contract

Notice of Filing of Order

MICHAEL CHRISTOPHER COURI
COURI & RUPPE PLLP
705 CENTRAL AVENUE EAST
PO BOX 369
ST MICHAEL MN 55376-0369

TOWN OF WHITE, a duly organized Minnesota township vs City of Biwabik, a Municipal Corporation

You are notified that on September 30, 2013, the following was filed:

Order-Other

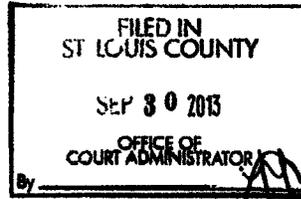
Dated: October 1, 2013

Amy Turnquist
Court Administrator
St. Louis County District Court
300 South 5th Avenue
Virginia Minnesota 55792-2666
218-749-7106

cc: LARRY C MINTON

A true and correct copy of this notice has been served pursuant to Minnesota Rules of Civil Procedure, Rule 77.04.

STATE OF MINNESOTA
COUNTY OF ST. LOUIS



DISTRICT COURT
SIXTH JUDICIAL DISTRICT

File No. 69VI-CV-12-1190

Town of White, a duly authorized
Minnesota Township,

Plaintiff,

vs.

ORDER

City of Biwabik, a Municipal Corporation,

Defendant.

This matter is before the Honorable Gary Pagliaccetti, District Court Judge, on Defendant's Motion for Summary Judgment and Dismissal of Plaintiff's Complaint as well as Plaintiff's Motion for Partial Summary Judgment. A hearing was held on September 3, 2013 at the St. Louis County Courthouse in Virginia, Minnesota. Michael C. Couri appeared on behalf of Plaintiff. Larry Minton and Michael G. Dougherty were present on behalf of Defendant.

Based upon argument of the parties and upon review of the files and records herein, and upon being duly advised in the premises, the Court hereby makes the following:

CONCLUSIONS OF LAW

1. That Plaintiff's complaint states a claim upon which relief can be granted. As per Minn. R. Civ. P. 12.02(e). "A pleading will be dismissed, for failure to state a claim, only if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist that would support granting the relief demanded." *Krueger v. Zeman Const. Co.*, App.2008, 758 N.W.2d 881, review granted, affirmed 781 N.W.2d 858. In its complaint, Plaintiff claims that Defendant owes additional funds under the Joint



Resolution, this Court cannot say with certainty that no facts exist to support this claim.

Plaintiff's complaint sets forth a clear claim against Defendant for Breach of Contract. As per the Restatement (Second) of Contracts § 236, "A breach may be one by non-performance, or by repudiation, or by both. Every breach gives rise to a claim for damages, and may give rise to other remedies."

2. That there are no genuine issues of material fact regarding the validity of the Joint Resolution.

A motion for summary judgment shall be granted when:

the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03.

Defendant has raised no genuine issues of material fact regarding the legality of the Joint Resolution. This Court notes that "as a general rule, a contract is not void as against public policy unless it is injurious to the interests of the public or contravenes some established interest of society." *Isles Wellness, Inc. v. Progressive N. Ins. Co.*, 725 N.W.2d 90 (Minn. 2006). There are no facts at issue material to the question of whether the Joint Resolution is illegal or unconstitutional. Defendant has provided no evidence to suggest that the Joint Resolution is contrary to public policy. Further, "Minnesota law permits voiding contracts if they are in violation of public policy, but it does not require such an action." *Isles Wellness, Inc. v. Progressive N. Ins. Co.*, 725 N.W.2d 90, 94 (Minn. 2006).

Because the Court is granting Plaintiff's motion for partial summary judgment it need not address Plaintiff's arguments that Defendant's counterclaim is barred by estoppel, laches, or waiver.

Upon the foregoing Findings of Fact and Conclusions of Law, the Court makes the following:

ORDER

1. That Defendant's Motion to Dismiss is DENIED.
2. That Defendant's Motion for Summary Judgment is DENIED.
3. That Plaintiff's Motion for Partial Summary Judgment is GRANTED.
4. Let the attached memorandum be made a part hereof.

Dated this 30th day of September, 2013 at Virginia, Minnesota.

BY THE COURT:



Gary J. Pagliacetti
Judge of District Court

MEMORANDUM

On April 5, 2001 the City of Biwabik ("Defendant") filed an annexation petition with the Minnesota Planning Municipal Boundary Adjustments Office seeking the annexation of approximately 6,760 acres of land from the nearby Township of White ("Plaintiff"). After negotiating for several months the parties agreed to terms of an orderly annexation; this agreement is memorialized in a document called "Joint Resolution for Orderly Annexation by and between White Township and the City of Biwabik in Settlement of Minnesota Planning File #A-6474 in Biwabik" ("Joint Resolution").

The Joint Resolution provides that the municipalities will perpetually divide taxes collected from the annexed areas. The Joint Resolution refers to this plan as both "reimbursement" and "revenue sharing;" its references to reimbursement are clearly with regard to future revenues that Plaintiff would have recognized but for the annexation. Plaintiff claims that Defendant has not been fulfilling its duty to share revenue as originally agreed; there is a dispute over the correct amount owed by Defendant and application of the formula used to arrive at this amount. Defendant has moved the Court to dismiss Plaintiff's complaint for failure to state a claim upon which relief can be granted or, alternatively, to grant summary judgment on the question of whether the Joint Resolution is void and therefore unenforceable. Plaintiff maintains that the Joint Resolution is legal and requests partial summary judgment on this issue.

"Summary judgment must be granted if, based on the entire record before the district court, there are no genuine issues of material fact and either party is entitled to judgment as a matter of law." *Zander v. State*, 703 N.W.2d 845, 856 (Minn.App.2005) citing Minn. R. Civ. P. 56.03. The parties have narrowed the issue to whether the revenue sharing provisions of the Joint

Resolution are void and unenforceable. Defendant's arguments regarding the enforceability of the Joint Resolution are addressed in the following paragraphs.

1. Are the Revenue Sharing Provisions of the Joint Resolution Unconstitutional?

Defendant insists that the revenue sharing provisions of the Joint Resolution violate the Minnesota Constitution by modifying Biwabik's power to tax. It points specifically to Article X, Section I of the Minnesota Constitution. That section states that "the power of taxation shall never be surrendered, suspended or contracted away." The Joint Resolution, however, is very clear that Defendant retains its full ability to levy and collect taxes; none of this power is shared with or granted to Plaintiff. The Joint Resolution clearly states that "the annexed properties shall be taxed at the rate determined by the City [of Biwabik], and the City shall be responsible for collection of the same." Once collected, the revenues are to be divided according to a formula in the Joint Resolution. The revenue sharing provisions of the Joint Resolution do not contract away or otherwise modify Defendant's power to tax; the revenue sharing provisions do not violate the Minnesota Constitution.

2. Is the Joint Resolution preempted by Minn. Stat. § 414.036?

Defendant argues that the revenue sharing provisions in the Joint Resolution are preempted by Minn. Stat. § 414.036 and the reimbursement schedule outlined therein. Minn. Stat. § 414.0325 governs the process for orderly annexation of a designated unincorporated area. In 2002, that statute read in part:

An orderly annexation agreement is a binding contract upon all parties to the agreement and is enforceable in the district court in the county in which the unincorporated property in question is located. *The provisions of an orderly annexation agreement are not preempted by any provision of this chapter unless the agreement specifically provides so.* (Emphasis added.)

The Joint Resolution does not provide that its provisions are preempted by any section of

Minnesota law; the revenue sharing provisions do not appear to be preempted by Minn. Stat. § 414.036. The parties sought special legislation clarifying that the Joint Resolution was not subject to the limitations outlined in Minn. Stat. § 414.036. Defendant now contests the validity of that special legislation.

3. Does the special legislation apply to the Joint Resolution?

The special legislation specifically references an orderly annexation agreement approved by White and Biwabik after September 1, 2002. The legislation was drafted and signed after the Joint Resolution was executed and was composed for the specific purpose of verifying that the reimbursement schedule set forth in the resolution need not comply with the reimbursement schedule in Minn. Stat. § 414.036. Defendant insists that (a) the legislation does not apply to the Joint Resolution executed on September 18, 2002 or (b) that the legislation is not retroactive. Based upon the very clear language of the statute, the Court finds that the legislation applies expressly and exclusively to the Joint Resolution and that it is retroactive. When curative acts are intended to validate, rather than to amend or repeal existing and applicable legislation, a plainly declared purpose will be effectuated within constitutional limitations. *Vorbeck v. City of Glencoe*, 288 N.W. 4, 6 (1939)....Pagliaccetti, J.