

# DOVE FRETLAND

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ATTN: Michele McPherson  
City Administrator  
City of Princeton  
702 2<sup>nd</sup> St. N.  
Princeton, MN 55371

RE: Annexation

Ms. McPherson;

At the May 13, 2021 regular city council meeting, a public hearing was had regarding an annexation petition submitted for property known as "Sherburne Village", which is located within Baldwin Township.

During the public hearing, objection to the annexation was made by Baldwin Township, and numerous individuals spoke in opposition to the annexation.

During the course of the public hearing a number of specific issues were raised with respect to the propriety of the annexation matter, and the City Council requested guidance as to the issues raised.

We have researched the applicable laws in this matter, and we have consulted with representatives of the Office of Administrative Hearings, Municipal Boundary Adjustment Unit (the "MBA"). The following are our determinations as to the issues raised.

The first issue raised was the assertion that the petition for annexation could not proceed because the property to be annexed did not "abut" any City of Princeton property because a

public roadway divides the City of Princeton property and Baldwin Township property. Minnesota Statute Section 414.001 Subd 6 defines “abut, abuts and abutting” as follows: “The term “abut,” “abuts,” and “abutting” refer to areas whose boundaries at least touch one another at a single point, including areas whose boundaries would touch but for an intervening roadway, railroad, waterway or parcel of publicly owned land”. Based on the above statutory definition, the fact that a public roadway intervenes between the City of Princeton property and Baldwin Township property, is not a barrier to annexation.

The second issue raised was the assertion that the petition for annexation could not proceed because not all owners of the property have joined in the petition. The property that is the subject of the annexation petition is owned by the applicants and their parent company. They are the “Property Owners” as defined in Minnesota State Statute Section 414.011 Subd. 5. The property interest of those that reside in mobile homes on the numerous lots on the property, is that of a landlord/tenant relationship. The individuals own the mobile homes, but they rent the lots on which they stand. As such, these individuals are not property owners who would need to join in this petition for annexation, and, therefore, this issue is not a barrier to annexation.

The third issue raised was the assertion that, because Baldwin Township has objected to the annexation, the City of Princeton is precluded from any further action, and the matter must now be referred to the MBA for further determination.

The petition for annexation that has been presented to the City of Princeton is governed by Minnesota Statute Section 414.033 Subd. 2 (3) which indicates a municipal council may by ordinance declare land annexed to the municipality and any such land is deemed to be urban or suburban in character or about to become so if the land abuts the municipality and the area to be annexed is 120 acres or less, and the area to be annexed is not presently served by public wastewater facilities or public wastewater facilities are not otherwise available, and the municipality receives a petition for annexation from all the property owners of the land. Except as provided for by an orderly annexation agreement, this clause may not be used to annex any property contiguous to any property either simultaneously proposed to be or previously annexed under this clause within the preceding 12 months if the property is or has been owned at any point during that period by the same owners and annexation would cumulatively exceed 120 acres. The property in question appears to meet all criteria for annexation by ordinance under this provision, and under this process, there is no “right” on the part of the Township to object and have the matter referred to the MBA for determination.

The provision for which objection by a Township and referral to the MBA for determination is found in Minnesota Statutes Section 414.033 Subd. 5, which is a completely separate petition and procedure than what has been presented to the City of Princeton. Therefore, this issue is not a barrier to annexation.

The fourth issue raised was the assertion that notice of the public hearing was not provided to all required property owners, and, as such, the annexation process could not move forward. The notice requirement for a public hearing on an annexation of this nature are found in Minnesota Statute Section 414.033 Subd. 2b, which states “before a municipality may adopt

an ordinance under subdivision 2 (*Conditions for annexation by ordinance*), clause (2), (3)(*the annexation petition submitted to the City of Princeton*), or (4), a municipality must hold a public hearing and give 30 days' written notice by certified mail to the town or towns affected by the proposed ordinance and to all landowners within and contiguous to the area to be annexed."

In communication with staff, it appears that none of the persons who asserted lack of notice are "contiguous" property owners entitled to statutory notice of the public hearing. However, it has been determined that there is one "contiguous" property owner that was not notified of the public hearing. This property owner was contacted by staff and the property owner indicated they had no objection to the annexation petition. However, in speaking with staff at the MBA, it has been recommended, in the interests of strict compliance with notice requirements, that the City set a new public hearing date, and ensure that each "contiguous" property owner is notified within the statutory timeframe. While this will delay the process a bit, it is not a barrier to the annexation (after notice and a new public hearing).

One other issue that was raised by someone in attendance related to a lawsuit that (they asserted) involved the parent company for the petitioners. Attached hereto you will find correspondence from the attorneys for the petitioners. This correspondence states that the petitioners and the parent company are, in no way, related to the litigation that was referenced, and we are not aware of any evidence to the contrary. While this is not something that is legally relevant to the petition for annexation, it is important that the council have accurate information.

If there are further questions or concerns, please notify me.

Sincerely,

*Damien F. Toven*

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Damien F. Toven

Cc: File  
Paul Dove