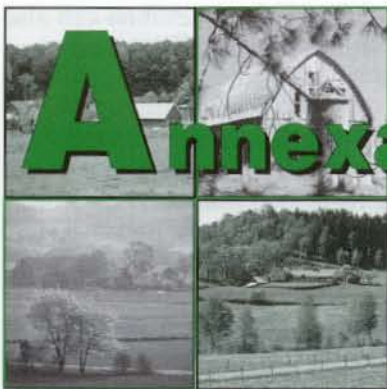




Annexation: A Convoluted Process Needing Reform

by Jean Hughes Raber, *MTN* Contributing Writer
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Annexation—it's the road to lost revenue, shrinking farmland, loss of community character, hard feelings, perhaps even disenfranchisement in the minds of many township officials. While there are moves township officials can take to gain some protection from annexation or even to reverse annexations that have already occurred (detachments), there are currently few guarantees to protect township land against annexation.

Selecting the right move against annexation means understanding the convoluted path that leads to annexation. This article provides an overview of the annexation process and introduces some of the key players involved. It also offers some topics for township officials to explore in more depth if they are faced with an annexation threat. Perhaps even more importantly, it provides a clear argument as to why reform is needed.

Understanding the Process

The process by which municipalities annex township lands depends on the types of local governments involved. At various points in the annexation process, state statutes may specify certain annexation protections, allow time for gathering referendum petitions, require that decision-makers adhere to certain decision criteria, hold public hearings, or allow annexation elections—again, all depending on the local units involved. Townships must therefore understand how these variables apply to their own situations.

While it is difficult to make many general statements about the annexation process, it usually begins when a city or village council passes a resolution to annex township property. Under some circumstances, annexations move directly from

resolution or petition to a final decision—by the State Boundary Commission or, more rarely, the county board of commissioners.

At other times, the annexation process may be detoured or even dead-ended because of testimony given at public hearings, referenda, etc. For example, general law townships facing annexation by cities may force an election by fulfilling petition requirements, provided there are at least 100 residents living on the land in question. In this case, a petition for election of 25% of the registered voters in the city and/or area to be annexed, and/or the remaining township may be filed.

Another variable in the annexation process is who votes in an annexation election and how those votes are counted. For example, an election must be held if a home rule village wishes to annex general township land. The annexation must pass among voters in the area to be annexed, in the village and in the balance of the township. The votes in the village and balance of the township are counted together.

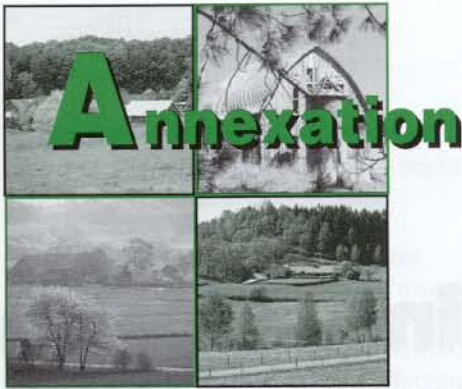
On the other hand, when charter township lands are marked for annexation by a petition of 20% of the registered voters in the annexed area, only the voters in the area to be annexed, and the city or village vote. Such situations, however, are rare.

Townships may also try using detachment as a strategy to fend off or reverse an annexation, challenge the legal sufficiency of the annexation petition, or present testimony at State Boundary Commission public hearings and meetings. Some of these strategies are discussed later in this article.

Protection from Annexation?

Charter townships have limited protections against ➤





annexations. The Charter Township Act (Public Act 359 of 1947) recognizes that townships which provide police and fire protection, water and sewer and other services should have additional protection from annexation, and that township land does not need to become part of a city in order to receive these services.

These protections exist if the charter township existed before June 15, 1978, or meets the following criteria under Section 34 of the Charter Township Act:

- Have SEV of at least \$25 million
- Have at least 150 residents per square mile
- Provide or contract for fire and

police protection, solid waste disposal, and water and sewer services

- Are governed by a comprehensive zoning ordinance or master plan

General law townships may enhance protection for their borders by incorporating as a charter township. However, this is not a guarantee against annexa-

MTA believes a fairer way to resolve annexation issues is through a three-way vote among those residing in the township, city and parcel to be annexed, eliminating the requirement for petitions to be filed in order for a vote to take place. MTA's position is that if a vote fails in any of those three areas, the annexation would not be allowed.

tion. A portion of the township can be annexed to straighten boundaries or to avoid instances in which portions of a township are completely surrounded by

the annexing city. Annexation can also occur if township residents themselves initiate the annexation process.

Role of the State Boundary Commission

The State Boundary Commission is the deciding body in most annexation situations. The Commission is comprised of three permanent state commissioners appointed by the governor for three-year terms. In addition, two members—one from a township, the other from a city—are appointed by the presiding probate judge in each county, to hear cases that arise within their county.

How a decision moves through the State Boundary Commission process is outlined in "Steps to a State Boundary Commission Annexation Decision" (page 16).

As the State Boundary Commission moves to approve an annexation, a township has opportunities for input into the process. For example, townships may challenge the legal sufficiency of a petition for annexation. Legal sufficiency means that:

1. All relevant boundaries of the adjacent city must be consistent with the boun-

425 Agreements: A Closer Look

Public Act 425 of 1984 allows one local unit of government to transfer property to another local unit for economic development projects—industrial or commercial enterprises, housing developments or environmental protection measures—for up to 50 years. The agreements generally involve sharing of revenue sharing by both units of government and may be renewed for up to 50 years as many times as both local units wish. Perhaps most important to townships, during the term of the 425 agreement, annexation may *not* occur.

425 agreements require a contract between the two local units. In drawing up the contract, the units must consider these factors:

- **Composition of the population.** This includes population density, land area and land uses, assessed valuation, topography, natural boundaries and draining basins, and past and probable future growth, including population increase and business, commercial, and industrial development in the area to be transferred. Comparative data for the transferring unit and the portion of the unit remaining after the transfer should be considered.
- **The need for organized community services.** This consideration includes the present cost and adequacy of governmental services in the area to be transferred; the probable future needs for services; the practicability of supplying such services in the area to be transferred; the probable effect of the transfer and of alternative courses of action on the cost and adequacy of services in the area to be transferred and on the remaining portion of the local unit from which the area will be transferred; the probable change in taxes and tax rates in

the area to be transferred in relation to the benefits expected to accrue from the transfer; and the financial ability of the local unit responsible for services in the area to provide and maintain those services.

- **The general effect on the local units of the proposed action and the relationship of the proposed action to any established city, village, township, county or regional land use plan.**

Once the factors listed above have been considered, the two local units must draw up a contract outlining the 425 agreement. The contract must stipulate:

- The length of the contract.
- Authorization for sharing taxes and other revenues designated by the local units. The manner and extent to which the taxes and other revenues are shared shall be specifically provided for in the contract.
- Methods by which a participating local unit may enforce the contract including return of the transferred area before the expiration date of the contract.
- Which local unit has jurisdiction over the transferred area upon the expiration, termination or nonrenewal of the contract.

Unless otherwise stated in the contract, the local unit to which the property is being transferred has jurisdiction over



dary data on file in the Office of the Great Seal, Michigan Department of State.

2. The description of the proposed area mathematically closes upon itself. This means that the measurements of the area make an area with boundaries that meet on all sides.

3. The proposed area must be contiguous to the city boundaries.

Legal sufficiency challenges may result in the withdrawal of the annexation petition, although a city wishing to move forward with the annexation may also revise the boundary definitions to meet legal sufficiency criteria.

Townships and individual property owners may participate in the public hearing process at which the commission determines the reasonableness of an annexation move. This determination is based on 18 criteria stipulated by Section 8 of the State Boundary Commission Act (MCL 123.1001 *et seq*) (see "Annexation, Incorporation and Consolidation Criteria", page 18). Townships may try to influence the Commission's decision by presenting their arguments on the last nine criteria on the list. Townships without land use plans will find it more difficult to pres-

ent their case at the public hearing.

After the public hearing, the township has 30 days to submit additional information to the Boundary Commission. Information collected during this 30-day period is distributed to interested parties; another seven days is allowed for response.

MTA further supports legislation requiring the annexation jurisdiction to pay for the cost of the elections.

Township residents may force a referendum on the final decision of the State Boundary Commission by filing a petition 30 days after the decision is made. Current law allows for petitions to be filed by residents in a city, township or village where an annexation situation arises, causing competing petitions. If the petition is valid, an annexation election is held in each area requesting an election. When the annexation election is held and all areas voting separately on the annexation approve it by a majority vote, the Commission will recommend that the

Michigan Department of Consumer & Industry Services (CIS) director sign an order implementing the annexation. If a majority in any one of the areas voting on the annexation does not approve the annexation, the annexation is defeated.

A referendum is permitted only if the annexed area has a population of 100 or more on the date the petition was filed. Such a referendum is an uphill battle for townships, because those in the city often outnumber township voters. According to current law, if the area proposed for annexation contains less than 100 residents, the determination by the Boundary Commission is final, and the residents have no right of referendum.

The township may also seek judicial review, after the Commission decision is made, through circuit court. A circuit judge may overturn a Commission decision signed by the CIS director, if he or she determines the Commission has made a procedural error, but not simply because he or she is sympathetic to the township's case.

A Fairer Way

The Michigan Townships Association believes a fairer way to resolve ➤

the property for the term of the contract. For example, if Township A transfers property to City B via a 425 agreement, the city has jurisdiction over the property for the duration of the contract.

In addition, 425 agreement contracts may include a variety of other provisions including:

- The method by which the contract may be rescinded or terminated by either local unit prior to the stated termination date.
- The manner of employing, engaging, compensating, transferring or discharging personnel required for the economic development project, subject to the provisions of applicable civil service and merit systems.
- The fixing and collecting of charges, rates, rents or fees and the adoption of ordinances and their enforcement by or with the assistance of the participating local units.
- The manner in which purchases shall be made and contracts entered into.
- The acceptance of gifts, grants, assistance funds or bequests.
- The manner of responding for any liabilities that might be incurred through performance of the contract and insuring against such liability.

Each local unit involved in a proposed 425 agreement must hold at least one public hearing before entering into a contract. Notice of the hearing must be given in compliance with the Open Meetings Act (MCL 15.261-15.275).

Thirty days after the hearings are held, the contract may be approved by a majority vote of the officials on the governing boards of both local units unless:

- **One or both of the local units passes a resolution calling for a referendum on the 425 agreement.** In this case, a

majority vote of electors is required for approval of the agreement. For example, City B could pass a resolution calling for a referendum while Township A does not. In this case, a majority of city voters and a majority of township board members are needed to approve the 425 agreement. If both city and township pass referendum resolutions, a majority vote of electors in both city and township is required.

- **At least 20% of the registered voters in the proposed transfer property file a petition in accordance with Michigan Election Law (MCL 168.488) with the local clerk within 30 days of the public hearing.** In this situation, a referendum on the transfer must be held in that locality. For example, if the 425 agreement involves a parcel in Township A and 20% of the registered voters in that parcel file a petition with the Township A clerk, Township A must hold a referendum on the 425 agreement. Township officials may not enter the contract without a majority vote of the voters.
- **There are no registered voters residing on the proposed transfer property and a petition signed by those owning 50% or more of the transfer area file a petition with the local clerk.** In this case, a referendum on the transfer must be held in that local unit.

The 425 agreement is in force when the clerk in the local unit where the transfer property is located files the contract with the county clerk and the Michigan Secretary of State. For example, if Township A transfers property within the township to City B under a 425 agreement, the Township A clerk must file the contract with the county clerk in which Township A is located (or in the county where the major part of Township A is located) and with the Secretary of State. ♦

annexation issues is through a three-way vote among those residing in the township, city and parcel to be annexed, eliminating the requirement for petitions to be filed in order for a vote to take place. MTA's position is that if a vote fails in any of those three areas, the annexation would not be allowed. A vote would not be required when the governing bodies agree to the annexation and no referendum petition is filed. MTA further supports legislation requiring the annexation jurisdiction to pay for the cost of the elections. Thus, annexation would not be outright prohibited, but the city would have to make a compelling case for the annexation to the voters in the community.

Strategies and Counter-strategies

Cities wishing to annex township land employ a number of strategies that make annexation easier. For example, a city might offer to:

- underwrite the costs of legal counsel for petitioners seeking annexation to the city;
- petition for boundary straightening;
- make sham land purchases; or

● designate urban growth areas near township borders.

Cities may also require or encourage developers to petition for annexation in order to receive sewer and water services. On the other hand, cities may do the opposite, and refuse to connect services to the townships or charge excessive rates to the township, thus making annexation more attractive. A 1979 court case ruled that cities could not refuse these services where public health was concerned. In that case, the Michigan Court of Appeals ordered the city of Saline to provide water and sewer services to T&N Chevrolet in Pittsfield Charter Township (Washtenaw County) when a malfunctioning septic tank created a health hazard. The city was allowed to charge higher rates to T&N Chevrolet than it charged to city users.

Cities may be detoured off the path to annexation by state and federal regulations. While a city's plan may include another local unit, such as a township or portion of a township, as a projected service area, state and federal agencies have policies to deny funds to plans contingent upon annexation.

Another strategy that cities may use to ease annexation is to divide a desired territory into two or more parcels with

fewer than 100 residents each in order to prevent a referendum on the annexation issue. That's what happened in the early 1990s when the City of Big Rapids tried to annex territory in Big Rapids Township (Mecosta County).

The Big Rapids situation turned into something like a high-stakes poker game when Big Rapids Township upped the ante on the city by filing its own petition to detach city property surrounding the territory in question. The detachment would mean that the territory the city wanted was no longer contiguous to the city boundaries and no longer vulnerable to annexation. And since there were more than 100 residents in the area proposed for detachment, a referendum was called and passed in both the city and township despite the city's efforts.

Detachment can only occur where land was once township land. Townships have used detachment in other ways to fight against annexation. Wheatfield Township (Ingham County) used detachment to reverse a previous annexation of land to the city of Williamston. Brighton Township (Livingston County) got a nearby city to the negotiating table just by mentioning detachment. Oneida Charter Township

Steps Involved in a State Boundary Commission Annexation Decision

The exact steps in an annexation process depends upon three factors:

- Who initiates the request (residents, landowners or units of government),
- What units of government are directly involved (general law villages, home rule villages, home rule cities, townships, charter townships or the state), and
- The current land use and population of the land proposed for annexation, especially the number of residents (1 to 100 residents or more than 100).

1. Filing a petition. A petition includes forms and maps that must be filed in order for the State Boundary Commission to determine that the petition is legally sufficient.

2. Legal sufficiency hearing. The State Boundary Commission reviews petitions in the order they are received to determine if they are legally sufficient. If not, the petition is returned with an explanation of the deficiencies. If the petition is legally sufficient, the Commission approves it and sets a public hearing for between 60 and 220 days from the date the petition was filed.

A petition must meet three conditions to be legally sufficient:

- All relevant boundaries of the adjacent city must be consistent within the boundary data on file in the Office of the Great Seal, Michigan Department of State,
- The description of the proposed area mathematically closes upon itself; and
- The proposed area must be contiguous to the city boundaries.

3. Public hearing. In evaluating the reasonableness of the proposed annexation, the commission refers to a list of 18 statutory criteria (State Boundary Commission Act, section 9, MCL123.1001-123.1020). The hearing allows all parties an opportunity to speak about the proposed annexation. The hearing must be held in or near the municipalities involved.

At the hearing, the petitioner may explain why annexation is desired or needed. Representatives of the city and township explain their positions on the proposal, and residents affected by the proposal are encouraged to comment. At the end of the hearing, commission members may ask questions.

For 30 days following the hearing, the Commission will entertain additional written information. After these materials have been distributed to the interested parties, they have seven days to file a response. The Commission may

(Eaton County) successfully detached a portion of the city of Grand Ledge in 1999. The detached area had been annexed by the city nine years previously, and residents were angered when their taxes went up an average of \$500 per year and they received nothing in the way of improved services for it.

The Road Less Traveled: 425 Agreements

A 425 agreement (named for Public Act 425 of 1984) is an alternative to annexation that allows for sharing of revenue between two local units. 425 agreements essentially allow one local unit of government to conditionally transfer property to another local unit for economic development projects—industrial or commercial enterprises, housing developments or environmental protection measures—for up to 50 years. During the term of the 425 agreement, annexation may not occur. The agreement may be renewed for up to 50 years as many times as both local units wish. 425 agreements also stipulate who will own the land when the contract terminates; township parcels may revert to the township when the contract expires.

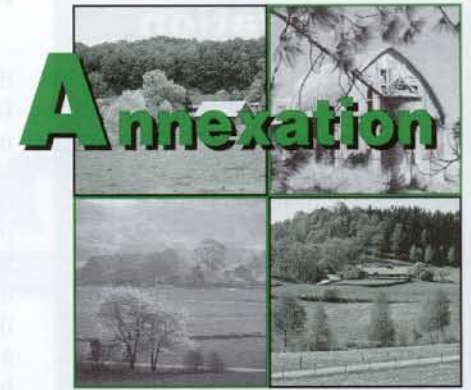
425 agreements may have several benefits for all parties concerned. Chief

among these are reduced hard feelings and legal fees associated with annexation disputes, and input in how the transferred land will be used, taxed and can affect adjacent properties. For more information on how 425 agreements work, see “425 Agreements: A Closer Look” (page 14).

Proponents tout 425 agreements as a win-win for all concerned. In four rural Michigan townships, a 425 agreement has been so successful that the neighboring city, once an annexation foe, may become a partner. Here’s how it happened:

Lenox Township (Macomb County) runs along the southern boundary of the city of Richmond. Richmond Township (Macomb County) runs along the city’s northern boundary. When the city slated portions of Richmond Township for annexation, Lenox Township was sympathetic. It was willing to provide services—police, fire, library, sewer, etc—under a 425 agreement to portions of Richmond Township, thus protecting those portions from annexation.

Lenox Township, through two additional 425 agreements, offered services to parts of Casco and Columbus Townships (St. Clair County) on the eastern border of the city. This move



would form a contiguous 425 agreements to provide service from Lenox Township, through Casco and Columbus Townships and up to Richmond Township. The result: more revenue for Lenox Township and annexation protection for the three townships involved in 425 agreements with Lenox Township.

Lenox Township Supervisor John Gardner says that the townships “had to do some education” at the required public hearings in the four townships planning to enter into the 425 agreement. “People weren’t sure what a 425 agreement was. When we showed them comparative tax rates and services information, that made it pretty clear what the benefits were.” ➤

schedule a supplemental public hearing if more information is needed or new information needs to be brought forward. If no supplemental public hearing is scheduled, the public record is closed at the end of the seven-day period, and the Commission sets a date for an adjudicative meeting.

4. Adjudicative meeting. The adjudicative meeting is when the State Boundary Commission discusses the information presented and votes on what decision to recommend. The meetings are usually held in Lansing, but can be held closer to the involved parties. Adjudicative meetings are held in open session, and anyone attending may attend to hear the discussion and vote of the commission.

5. Findings of fact meeting and director’s decision. The findings of fact meeting is held to finalize the Commission’s action. At this meeting, the Commission adopts its findings of fact document, which outlines the facts relevant to the proposal and the considerations on which commission members base their decision. The Commission then submits the proposed order to the Michigan Department of Consumer & Industry Services (CIS) director for a decision. After the director makes a decision by signing an order, public officials and residents have two ways to appeal the decision: referendum election or judicial review.

Referendum election

A referendum election is permitted only if the annexed area had a population of 100 or more on the date the peti-

tion was filed. A referendum election is requested by filing a petition within 30 days of approval of an order for annexation in any one of the following:

- The area to be annexed.
- The balance of the township outside the area to be annexed.
- The city to which the area is to be annexed.

If the referendum petition is valid, the Commission will recommend that the director sign an order to place the question on the ballot in each area requesting an election. When the annexation election is held and all areas voting separately on the annexation approve it by a majority vote, the Commission will recommend that the CIS director sign an order implementing the annexation. If a majority in any one of the areas voting on the annexation does not approve the annexation, the annexation is defeated.

Judicial review

An involved party may seek judicial review through Circuit Court. The judge has the authority to overturn an order signed by the CIS director.

—Compiled from
Annexation: Bringing all the pieces together
Consumer & Industry Services,
Corporation, Securities and Land Development,
State Boundary Commission

Annexation, Incorporation and Consolidation Criteria

State Boundary Commission Act,
Section 9

1. Population
2. Population density
3. Land area
4. Land uses
5. Assessed valuations
6. Topography
7. Natural boundaries and drainage basins
8. Past and probable future urban growth, including population increase and business, commercial and industrial development in the area
9. Comparative data for the annexing municipality and the remaining portion of the unit from which the area will be detached
10. Need for organized community services
11. Present cost and adequacy of governmental services in the area to be annexed
12. Probable future needs for services
13. Practicability of supplying such services in the area to be annexed
14. Probable effect of the proposed annexation and of alternative courses of action on the cost and adequacy of services in the area to be annexed and on the remaining portion of the unit from which the area will be detached
15. Probable increase in taxes in the area to be annexed in relation to the benefits expected to accrue from annexation
16. Financial ability of the annexing municipality to maintain urban-type services in the area
17. General effect upon the entire community of the proposed action
18. Relationship of the proposed action to any established city, village, township, county or regional land use plan

Annexation *Continued from Page 17*

In an effort to guide land use throughout the four townships, the four townships formed a Regional Planning Commission made up of nine members, three from Lenox Township and two from the other townships. The commission takes a "big picture" approach to land use, considering how development will affect not just one township but the overall area. Gardner says that the city is now interested in becoming a cooperative partner with the townships; it has approached Lenox Township with a proposal to provide the yet-to-be-built sewer services in Richmond Township—through a 425 agreement.

Before the 425 agreements went into effect, two developers in Richmond Township petitioned the State Boundary Commission for annexation to the city of Richmond. The Commission, in reviewing their petition, claimed the 425 agreements between Lenox and Richmond, Casco and Columbus Townships were improper. The townships filed suit in circuit court on the grounds that the Commission did not have jurisdiction to determine the legal validity of 425 agreements.

In the past, the Commission had not been involved in 425 agreements. However, the circuit court judge ruled the Commission did have the authority to review the legal validity of the 425 agreements. The township appealed the decision to the Michigan Court of Appeals. In *Township of Casco, Township of Columbus and Township of Lenox vs. Michigan Boundary Commission and Walter Winkle, Patricia Winkle and City of Richmond*, #217621, the Court of Appeals upheld the circuit court decision. Further appeals are pending. Gardner says that if it is ultimately decided that the Lenox Township 425 agreements are improper, the townships will look at the ruling and try to revise the agreements accordingly.

A Summary of Options

Until reform is made, let's sum up some of the strategies that townships can use to fight annexation:

● **File petitions to force a referendum.** Success here depends on (a) whether there are 100 residents on the land proposed for annexation, (b) how well the township residents can make their case to the voters and (c) whether the township can get the vote out (since city voters generally outnumber township voters by a considerable margin). Be careful not to use township funds for this purpose; it's a violation of the Campaign Finance Act. A core group of dedicated volunteers willing to canvas neigh-

borhoods and get the word out is the best way to make the township's case.

● **Use charter township exemptions.** Remember that general law townships may be eligible for charter township protections if they meet certain criteria. Also remember that charter township exemptions are not a safeguard against all types of annexations.

● **Challenge legal sufficiency.** A legal sufficiency challenge may end in only a partial victory, since municipalities are allowed to change the boundary descriptions of their petitions.

● **Present arguments against annexation during State Boundary Commission proceedings.** Township partisans should be well-organized and prepared to address the decision criteria that decision-makers are bound to consider. A heartfelt plea to retain the proposed area of annexation isn't enough; it should be backed up with hard data, clear comments and written materials showing how the township's arguments address the decision criteria.

● **Play the detachment card.** Remember that only land that once belonged to the township can be detached. But if this applies to your situation, you may find that mere mention of detachment is enough to leverage an annexing municipality to the bargaining table, where a better solution to annexation can be found. Other townships have detached successfully.

● **Appeal to the circuit court.** If a township believes an annexation decision has been made in defiance of stipulated criteria, it can appeal to a circuit court judge to reverse the decision. Remember that the judge cannot simply decide to reverse the decision merely because he or she might sympathize with the township.

● **Try for a 425 agreement.** Parcels involved in a 425 agreement cannot be annexed for the duration of the agreement. Moreover, the 425 agreement provides for sharing of revenue and a say in how the 425 parcels are to be used. ♦

