Annexation in Iowa: An analysis of the Iowa annexation statutes

by

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A thesis submitted to the graduate faculty
In partial fulfillment of the requirements for the degree of
MASTER OF COMMUNITY AND REGIONAL PLANNING

Major: Community and Regional Planning
Major Professor: Riad G. Mahayni

Iowa State University
Ames, Iowa
1997
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Signatures have been redacted for privacy
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ACKNOWLEDGMENTS

I would like to express my sincere gratitude to the following people who have assisted me in this endeavor.

Thanks to Chris Scase of the Attorney General’s office who made obtaining necessary information and case studies incredibly painless. Thanks to Stu Huntington and Tim Borich who also provided endless amounts of information. I would like to give special thanks to my major professor, Riad Mahayni, whom without his help and prodding this project would never have been completed. I would also like to thank all of my committee members for their patience and help.

I would especially like to thank my friends who have been incredibly supportive throughout this project. Thanks to Lance, Amanda, and Jen for all of their advice and to Master Pak for providing a structured outlet for all my frustrations. I would also like to give a special thanks to my parents, Ben and Carol, and the rest of my family (Toni, Dan, Jill, and Alex) for their love and confidence that I could accomplish this project. Lastly, I would like to thank one of the best writing buddies, my cat, Bandit.
ABSTRACT

Two different types of controls regulate the growth of cities in Iowa. Zoning provides cities with internal control, and annexation gives cities the ability to acquire additional land along its boundaries. As the cities in Iowa have grown the annexation statutes have been used extensively. Several types of annexation can be used to expand the boundaries of a city; each type has criteria that must be met in order for the annexation to be legal. Many cities in Iowa have started looking to the same land for growth and as these cities try to annex the same land, weaknesses with the annexation statutes have become apparent.

Problems have arisen because annexation statutes treat Iowa communities as if they were still rural in nature. The statutes provide for eighty/twenty annexation that provides cities with a tool to push landowners into annexation. Creating percentage restrictions on the size of the land to be annexed would provide one solution to this problem. Complicating the situation is that the City Development Board has not been provided with funding so annexation plans can be made for trouble spots in the state. Providing the Board with funding will allow the Board to form plans and keep cities out of the Iowa Courts. Also, if the Board had funding it would curtail the abuse of the eighty/twenty annexation statute.
CHAPTER ONE
INTRODUCTION

General Background

The population growth of a city can be caused by several factors. Natural increases in population and in-migration are two such causes, and are the primary factors governing population growth. (Stahura, 1982). As people move into the city and children are born, controlling spatial growth becomes increasingly important. Spatial growth restrictions, even though they are necessary, can cause difficulties for many parties. Through the decades different methods of controlling spatial growth have been tried and various restrictions and guidelines have been developed to help cities. Zoning and annexation are two ways that cities can control growth.

Zoning, the division of land into sections or districts, is an important part of local government’s ability to provide for the health, safety, and general welfare of the people. As each district is defined restrictions are determined. These restrictions include such things as lot size, building type and size, lot usage, and other various land use characteristics depending on the designated use. Zoning is also used to keep similar land uses together and avoid the placement of conflicting uses next to each other. For example, the construction of a fertilizer plant next to a
residential neighborhood would constitute conflicting land uses. Homeowners do not like the smell and noise of an industrial district. It decreases the value of their homes and in general makes their area an unpleasant place to live.

**History of Zoning**

Early examples of zoning come from a document called "The Laws of the Indies," which set forth the criteria for the building of Spanish style settlements in 1573 (So, 1988). European countries had been using various forms of zoning for many years. In 1916, New York City established zoning controls throughout the city for the purpose of regulating tenement housing. This zoning ordinance was tested and upheld in the courts in the case of Lincoln Trust Co. v. The William's Building Corporation in 1920 (Wright, 1985).

The Standard State Zoning Enabling Act was proposed in 1922 and adopted by all fifty states by 1928 in a form that was almost identical to the original law. This act states that all zoning should be in accordance with a comprehensive plan. The first community to have a comprehensive plan that was based on the general welfare of the city was Cincinnati in 1925. A comprehensive plan provides guidelines for growth and outlines long term goals of the community. Unfortunately, the Standard State Enabling Act does not have the capability to deal with the problems and issues of modern planning. Many changes have been made to this law because the
frequent occurrence of rezoning was not foreseen. Other modern issues such as flood plain management, shopping centers, billboards and other problems that require advanced legislation were also not problems at the conception of the Act. At the same time, many communities have adopted growth management plans that were not covered in this Act.

Another important milestone in the history of zoning was the case of the Village of Euclid v. Ambler Realty Company in 1926, in which a developer contested the zoning in Euclid, Ohio. The developer claimed the property was worth significantly more zoned industrial than residential. The property had been zoned residential to protect the other single-family homes in the area. The courts realized the importance of land use continuity and upheld the zoning ordinance. First of all, it was not only a victory for the City of Euclid but set the stage for the broader social and economic implications of zoning ordinances (So, 1988). Secondly, it also openly stated the constitutionality of the use and power of zoning ordinances to protect the public welfare.

Zoning originated as a way not only to regulate the types of land uses to promote the general health and welfare of the people, but also to control the aesthetics of the city. Beautiful communities attract new residents and promote healthy growth. Ebenezer Howard’s ‘garden city’ concept as well as Daniel Burnham’s work for the 1893 World Colombian Exposition influenced this line of thinking greatly (So, 1988). The regulation of sign
size and other aesthetics, such as storefronts, help create a community atmosphere as well as attract new businesses.

Zoning ordinances are used for counties as well as cities. Counties have the power and ability to regulate the development that takes place in their jurisdiction. But, not all counties have enacted zoning ordinances and therefore rely on the basic codes and regulations set forth by the legislation of the state. This, however, is becoming more rare as cities expand and create the possibility of conflicting land uses.

**Police Power**

Zoning is derived from police power, the power the government has to protect and further the public health, safety, and general welfare. Although zoning is a direct descendant of police power, it can not be used in any other way but to help the general welfare of the public.

Police power is usually wielded at the state level, where it is used to confer rights to the local governments. If a local government is intent on passing regulations it has to be granted this right by enabling legislation at the state level. Each state has rules and regulations, generally called enabling legislation, that allow the county and city governments to pass regulations. The Standard State Zoning Enabling Act is still in place in most states and gives the local governments the authority to zone. Police power is the concept under which zoning protects the public welfare. Although police power does not have the ability to acquire property rights,
Eminent domain does. Eminent domain is a vehicle cities can use which is made possible by police power.

**Eminent Domain**

Eminent domain is the right a government has to take or confiscate land for the general health and welfare of the public. Even so, the government may not decide arbitrarily to take property. The use of eminent domain must be necessary and for the public good. A judge must review each occurrence of eminent domain before the process may take place. Eminent domain also requires that just compensation be given for the confiscated property. Police power is limited by the requirement that it is for the general welfare of the public and is an umbrella term from which the powers come. Eminent domain is limited by the fact that just compensation is required, where just compensation is defined as the fair market value of the property. That is what the property would be worth if it were placed on the real estate market. If just compensation is not given to the landowner then a taking has occurred.

**Taking**

When either police power or eminent domain without compensation is extended too far this constitutes a 'taking'. The improper use of police power or eminent domain is usually uncovered when a landowner challenges a regulation. The issue of taking entered the legal system as part of the Fifth Amendment and Fourteenth Amendment to the U. S.
Constitution. These Amendments state that private property should not be
taken for public use unless just compensation is given to the landowner.
For example, David Lucas bought a section of South Carolina ocean front
property with the intent of developing it. A few years after the purchase the
State of South Carolina passed legislation that barred any further
development of property along the ocean front for environmental reasons.
The economic value of the land was considerably affected by this
legislation. Lucas filed in court that this was an illegal use of police power.
The courts agreed.

The issue of taking has become increasingly controversial over the
past few years and the catalyst for many different types of legislation.
Taking is becoming a larger issue as cities and towns start expanding into
rural areas. The extensive housing developments and business parks that
are being built in modern cities require more land. Many have acquired
this much-needed land through a separate process called annexation.

**Annexation**

Annexation is defined as an addition of territory to a municipal
corporation. Generally it involves joining all or part of the territory of an
unincorporated, less populous or subordinate local unit to that of a larger
unit, usually incorporated, offering a more complete array of municipal
The major purpose of annexation is to promote orderly growth. If properly used, annexation can preserve the expanding city as a whole and at the same time allow the city to maintain a comprehensive economic plan. As cities annex land, services must be provided to the newly annexed area. These services may include things like fire and police protection, trash collection, snow removal and city sewer and water. The more orderly the growth, the better able the city is to provide these various services.

There are various reasons cities annex land. Gaining additional land for expansion and capturing a larger tax base are two reasons. Annexing land for a larger tax base means that the city must consider whether the taxes brought in by the annexation are more than it will cost the city to provide the necessary services. Annexation also provides protection against another city annexing the same property and developing it with a conflicting land use. Another reason a city may annex land is that the landowners in the unincorporated area have petitioned the city to provide services. The most common reasons to annex, however, is that development has already occurred in the area and the city is providing some services or that development has taken place and basic services need to be provided. Finally a city may annex land simply because it sees new development in this area in the near future.

Some people have accused cities of annexing only to enlarge their tax base, but this is generally not the case, particularly when development has
already taken place. If a housing development or a small business district has been built just outside the city, the city may be able to provide such things as water, sewer, fire and police protection. In cases where these services are already being offered it is very unlikely that property owners would want to pay extra for services they are already receiving. For this reason some cities refuse to offer services outside of their boundaries or charge extra for these services. This makes annexation more desirable to new developments.

Another difficult annexation situation occurs when some development has taken place outside of the city’s boundary and no services are being provided for the property owners. This is fairly rare since the property owners usually want some of the services that the city offers. However, some residents may be willing to forsake the convenience or safety of services because they are located in an isolated area and feel that annexation will facilitate a more rapid population of their neighborhood.

When first constructed a development may be self-sufficient or small enough that the county government feels it can adequately handle the maintenance of the development. But as the development ages and expands it becomes more difficult for the county to provide adequate services. At this point the development would most likely desire to be part of a city that could provide the needed services. This situation is rare because waiting to annex areas that have already seen development is not
always a good idea. If a city waits to annex the new development, it becomes responsible for any necessary major repairs. Most cities annex property before development has reached this critical level.

Most cities consider annexing land before any development has taken place in order to control growth. Cities would like to use undeveloped land already inside its borders instead of having unorganized growth occur outside its perimeter. Cities also realize that growth will take place on property located outside of its borders and want to have control of that growth. Sometime within the foreseeable future the city realizes this growth will occur. As a result, most annexations happen in conjunction with fringe development.

There are three basic types of annexation. The first occurs when the residents of an area petition a city for annexation. The second is also a voluntary annexation but the land to be annexed is within two miles of another city. The third type of annexation is known as an involuntary annexation. This is when a city wants to annex the territory and the landowners do not want to be part of the incorporated area. There are different procedures and issues for each type of annexation, which will be discussed later. Governing annexation is unique to each state and can be an involved process.
Governing Annexation

The laws governing annexation differ from state to state. Many boundary review commissions were created in response to the rapid growth of suburban communities after World War II. Many people were abandoning industrial urban centers to live in the suburbs. As this growth rate increased many city officials were concerned with unplanned and uncoordinated development. Other concerns were the possibility of communities competing over the same land, local fiscal problems, and the creation of small local governments that lacked viability. These commissions were seen as a way a state could manage city development in rational ways.

Iowa is among a few states which has an independent agency that oversees the annexations throughout the state. This agency is called the City Development Board, and was established in the Home Rule Act of 1972. In 1975, the Board was given statewide authority when certain provisions of the Home Rule Act became mandatory. The function of this Board is to maintain records of all city development actions such as boundary changes and incorporations within the state. The Board usually has the responsibility to approve or deny such actions. The Board can also review city plans as designated by the Urban Revitalization Act (A is for Annexation, 1981).
The five members of this Board must serve six year staggered terms. These members are appointed by the Governor and confirmed by a two-thirds vote of the Senate. No member is allowed to serve more than two complete terms but reappointment is allowed (Code of Iowa 368.9). Section 368 of the Iowa Code addresses city development and this is where cities go to find the appropriate procedures for annexing territory. With time, many cities have started actively annexing land. These experiences have caused many city officials to criticize the current annexation procedures.

Problem Statement

As cities in the state of Iowa have grown, many property owners have found themselves in the middle of a land war. Communities are appalled at the idea of finding themselves without land to expand and develop and, at the same time, various communities have become locked in heated and drawn out legal battles over the same land. Property owners are concerned with the costs, both social and economic, of being annexed.

There are two different regions in the State of Iowa currently undergoing significant annexation problems. The first case study is located in the Des Moines metropolitan area. The cities of Clive and Waukee have been locked in a legal battle for the past several years. In the second, the cities of Cedar Rapids and Hiawatha, located in eastern Iowa, have just started dealing with annexation problems. As city officials turn to the documents that guide them to solve these problems they find the guidelines
lacking. These cases, in addition to others, will be examined in closer detail for the purpose of analyzing the current annexation guidelines.

Methodology

Four different case studies will be reviewed using a criteria developed in Chapter Two. During the analysis an exploration of weaknesses in the current annexation statutes will be conducted. The case studies used are some of the most interesting and controversial cases brought before the annexation statutes. Significant problems will be identified and defined, and possible solutions will be given.

Plan of Study

The literature search conducted in Chapter Two will consist of a close look at the procedures outlined for annexation, the issues involved in annexation, and the criteria that has been set forth in explicit and implied terms for a legal annexation. Chapter Three will be an in depth look at different case studies. The criteria set forth in Chapter Two will be used to analyze these different cases to see which of the criteria the cities have met. During the analysis of these cases a search for any problems with the annexation statutes as they currently exist will be conducted. These problems will also be briefly identified in Chapter Three. Chapter Four will then take a closer look at these problems, give specific examples using the case studies from the previous chapter, and supply some possible solutions. These solutions will also take into account the criteria for
annexation set forth in Chapter Two. Chapter Five will offer summaries and conclusions.
Annexation is an important aspect of a city government's ability to control spatial growth of the community. The way a city annexes land depends on each state's annexation statutes, which vary from one state to another. This chapter gives a brief discussion of the different types of annexation laws and will show where the Iowa statutes fall within the range of restrictions. A close look at the three different types of annexations available in Iowa will then be provided. The analysis which follows will include a description of the steps required for an annexation proposal to be approved, and a review of the criteria needed for annexation. These criteria are not designated in strict detail but have been compiled by looking at precedents set by the courts. A comparison between Iowa's statutes and the annexation laws used in other states will also be made. A closer look at these will provide an understanding of how exactly Iowa's statutes fit into the variety that are being used.

Types of Annexation Laws

The different types of annexation laws that states use are a result of individual experiences. Most of the annexation statutes used have grown
out of legislation passed at the turn of the century. As annexation has become increasingly popular, incremental steps have been taken to revise these statutes. Unfortunately, these steps have not been very effective. Most of these annexation statutes take extensive amounts of time and paperwork before the application is approved. Also, they tend to treat the communities as mostly rural instead of the thriving metropolitan areas that have typically developed. Annexation laws can be separated into five categories that are defined by where the responsibility of final approval rests.

Out of the five approaches, the Legislative Determination and Popular Determination types are the oldest. The Legislative Determination approach leaves the decision of annexation up to the state legislature. This means that each annexation proposal must be deliberated and acted on by the state legislature. The Popular Determination category refers to annexation decisions that are made by local ‘residents’ through an election and/or petition (Liner, 1993). The ‘residents’ can be defined as the owners and residents of the annexed area as well as residents and/or owners of property located within the city limits. An annexation could only take place after one or a combination of these two residential groups has made a favorable vote.

The other three approaches to annexation are modified versions of the Legislative and Popular Determination methods. Cities have
implemented these other approaches in an attempt to strengthen their ability to annex land. Municipal Determination is the extension of the cities boundaries through the one-sided action of the local governing bodies. For example, in Nebraska, primary class cities have the authority to annex second-class cities. Therefore Lincoln, Nebraska, can annex surrounding land and towns to prevent the evolution of suburbs (Kelly, 1995). Cities with these types of annexation laws were found to annex land at a greater rate than any of the other categories.

Judicial Determination is a category in which the state judiciary determines whether or not an annexation proposal is approved. In the state of Virginia the judges of the county circuit courts are designated as the governmental agency able to determine when the boundaries of a city may be changed (Bain, 1966).

The final approach to annexation is the Quasi-Legislative Determination approach. In this approach, an independent, non-judicial Board or commission determines if the proposed annexation should take place (Galloway and Landis, 1986). Iowa statutes are an example of this type of approach. The City Development Board is responsible for the approval of all annexation proposals within the state. As more annexations have taken place, many different studies have been initiated to look at the affects these different types of annexation laws may have on the growth of cities.
One of the most recent studies, conducted by Gaines H. Liner, in 1993 found that the types of annexation laws used in a municipality does affect the rate at which the municipality annexes land. He found that the type of municipal governing structure that was used was important in determining the rate at which cities annexed territory. Cities with municipal determination type annexation laws that used a commission type of government were more likely to succeed in annexation. He also found that cities which had quasi-legislative annexation laws and have a mayor-council form of government had a more difficult time expanding corporate boundaries (Liner, 1993).

Annexation has become a very popular and controversial way for cities to expand corporate limits and strict guidelines have been set forth to help the process go as smoothly as possible. Many cities have started annexing land in large quantities because of the threat to their economic foundation by becoming land locked (Liner, 1993). As a city grows land uses become more intense and the density of a city increases. People do not like feeling overcrowded, so dense cities tend to lose populations to other cities which have more room to grow. Annexing can revive this decreasing tax base. However, as suburbs gain more power, annexing can become difficult. This makes clearly defined annexation guidelines extremely important, even in Iowa.
Annexation in Iowa

Four different types of annexation have been identified in the State of Iowa. They include voluntary annexation, voluntary annexation with the sought after land located within two miles of another urbanized area, eighty/twenty annexation, and involuntary annexation. The one thing that all of these types of annexation have in common is that the area to be annexed must adjoin or have a common boundary with the city for at least 50 feet. Each of them has different procedures for implementation.

Voluntary Annexation

The first step in the most common type of voluntary annexation is application for annexation by the property owner to the city. If the city council approves, the city clerk sends a resolution of approval and a map of the property to be annexed to three different agencies: the county recorder, the secretary of state, and the district office of the department of transportation. As soon as the secretary of state officially acknowledges that they have received the materials, the annexation is legally complete. This process is summarized in Figure 2.1.

Eighty/Twenty Annexation

Another type of voluntary annexation is also described in Section 368.7 of the Iowa Code. This type of annexation occurs when an 80/20 split of landowners is evident in an annexation proposal. An application for annexation may be submitted when at least 80 percent of the landowners
1. Property owners apply for voluntary annexation to the city council.

2. Public notice is given at least 10 days before city council meeting.

3. City council approves application by resolution.

4. Upon approval the city clerk files a copy of resolution map and legal description with the Iowa Department of Transportation, County recorder, and Secretary of State.

5. Annexation is complete when the Secretary of State acknowledges receipt of map and resolution.

Figure 2.1—Voluntary Annexation Flow Chart
in the territory to be annexed are for the annexation. A public hearing is held and at least four of the five Board members must approve the annexation proposal.

This type of annexation was added in 1993 along with an expansion of the City Development Board from three members to five members. This type of annexation allows cities to submit an annexation application where eighty percent of the land to be annexed is considered a voluntary annexation. The other twenty percent of the land could either be voluntary or involuntary annexation. Procedures for this type of annexation are the same as voluntary annexation.

Voluntary Annexation II

The second type of voluntary annexation occurs when the area to be annexed is within an urbanized area. An urbanized area is any area of land within two miles of the boundaries of a city. In cases such as this the City Development Board and the city council must approve the annexation. The rationale behind this type of approval system is that larger cities have a greater interest as to what types of development are taking place within two miles of their boundaries. The City Development Board referees disputes in these cases. Many such cases are occurring within the state because many suburbs are continuing to grow and desire the same land.

The procedures for this type of annexation also start with the property owner's application to the city council. At least ten days before
any action is taken the city council must send a copy of the application by certified mail to the city council of each city whose boundary adjoins this territory and any city council of a city that is within two miles of the territory. The Board of supervisors of each county that contains a portion of the territory to be annexed must also be notified as well as the regional planning authority of the territory. After the city council approves this application the city clerk files the council resolution, a legal description of the property, and a map of the territory with the City Development Board. At this point the Board holds a meeting on the annexation where citizens can express concerns over the issue and the Board may request additional information. If approval of the proposal is granted the Board then files the necessary documents to complete the annexation (A Guide for Annexation). This process is summarized in Figure 2.2.

**Involuntary Annexation**

Involuntary annexation is the most controversial and emotional type of annexation. There are six different entities which can request an involuntary annexation. They are; The city council, the county board of supervisors, the regional planning authority, 5% or more of the city’s electors, 5% or more of the electors in the area proposed for annexation, or the City Development Board. The petition for annexation must include: 1) a general statement of the proposal, 2) a map of the territory, 3) a statement of assessed valuation of platted and unplatted land, 4) the
1. Landowners apply to city council for voluntary annexation.

2. Ten days prior to action by the city council a copy of the application is mailed by certified mail to the city council of each city which adjoins the territory, city council which is within two miles of the territory, the board of supervisors of each county that contains a portion of the territory, and the regional planning authority. Public notice shall be given in the official county newspaper of each county involved.

3. City council approves application by resolution.

4. City council requests approval by City Development Board and the Board notifies all affected parties.

5. The Board holds a public meeting to hear arguments for and against the proposal.

6. Annexation is complete when the Board approves the proposal and files copies in compliance with the statutes.

Figure 2.2 – Flow Chart for Voluntary Annexation II
names of property owners, 5) an indication of population density, 6) a description of topography, 7) plans for disposal of assets and assumptions of liabilities, 8) a description of existing municipal services including, at least, water supply, sewage disposal, and fire and police protection, 9) plans for agreements with any service district, 10) in case of an annexation or incorporation, the petition must state that none of the incorporation is already within a city, 11) plans shall include a formal agreement between affected municipal corporations for the maintenance and improvement of shared traffic in an incorporation or boundary adjustment (McCoy, 1982).

As soon as the City Development Board receives the petition and has determined that everything is in order a notification for a public hearing and a copy of the annexation proposal is issued to all parties concerned. At this point anyone is free to present arguments for or against the annexation.

Once the annexation process has started, two additional people are appointed to the City Development Board. One of these people represents the property that is being annexed and another represents the city involved in the annexation. The representative from the land to be annexed is appointed by the county Board of Supervisors and the person from the city is appointed by the city council. The Board then becomes a seven-person council that considers all the arguments and what is best for the general public.
After the Board approves the proposal, the issue then becomes subject to a public election. The citizens of the city and of the territory to be annexed are eligible to participate in the election. If a simple majority approves the proposal the annexation is complete, pending completion of filing requirements and expiration of the appeal period. Any resident of the city involved in the annexation, a city within the annexation area, or a property owner of the land to be annexed may appeal the Boards decision or the legality of an election. This appeal must be filed within 30 days of the decision or the publication of the results of an election (A Guide, 1995).

If there are one or more applications for voluntary annexation, involuntary annexation, or incorporation for a common territory, the City Development Board has other requirements. Any other applications of annexation for the same territory must be received within thirty days of the first applications.

The Board must approve the voluntary application provided the application was not filed in bad faith or that it is contrary to the best interests of the citizens in that territory. If the Board finds that the city cannot provide services to the territory to be annexed that are sufficient to meet the needs of the territory it may deny the voluntary annexation. The Board may appoint a committee to find additional information and hold a public hearing. A decision must be made within ninety days of receipt of the application. This process is summarized in Figure 2.3.
1. Petitioner drafts proposal, holds a public meeting after publishing time and place and providing due notice to all affected property owners and local governments.

2. Petition filed with City Development board.  
3. Board reviews petition for completeness.  
   Within 90 days

4. Board provides notice of the filing to all directly-affected local governments and area-wide planning organizations.

5. Development committee formed for the city.

6. Committee holds public hearing and reviews petition for merit.*
   ▼ If Approved ▼

7. Public election held by county commissioner of elections.*
   If Approved

8. Annexation becomes effective.

*Affected parties may appeal to the court.

Figure 2.3 -- Involuntary Annexation Flow Chart
The Board may also initiate proceedings for annexation, incorporation, and discontinuance. The Board may request a city to submit a plan for city development or may formulate its own plan. A plan that is requested by the Board must include the same information as a petition. These guidelines are to help with the actual process and not with the decision as to whether annexation is really needed. A set criterion for annexation has not been set forth, so many times annexation proposals have ended in court cases. The following criteria regarding when an annexation proposal is acceptable are based in judicial precedents.

**Annexation Criteria**

As the issue of annexation has been defined through many court cases, two absolute criteria have been established. These criteria are: the creation of islands is not allowed, and refusing to annex land because of the race of the landowners is not permitted.

**Islands**

The statutes that govern Iowa’s annexation protocols specifically state that no islands shall be created with the annexation. An island is defined as land that is not part of a city and that is completely surrounded by the corporate boundaries of one or more cities (A Guide, 1995). As stated in section 368.7, paragraph 2 of the Iowa Code, “The secretary of state shall not accept and acknowledge a copy of the map and resolution of annexation that would create an island.” The City Development Board has
also stated that the elimination of islands is a priority and that the Board of supervisors in each county that have existing islands must notify the Board.

**Annexation and Race**

The annexation of land is an important way for cities to gain land for development and revenue purposes. Even though precautions are taken to make sure that selfish reasons are not behind annexation, this still happens. Sometimes cities annex land along major highways and shopping centers solely to add significantly to their tax base. Annexation can also be used to dilute the voting power of minorities. For example, a city that has At-Large city council seats and desires to undermine the voting power of minorities can annex land that has primarily white owners. However, a dilution of a person's voting rights is forbidden by the Fifteenth Amendment (Zimmerman, 1977). Racial motivated annexation is illegal and this criteria was upheld by the Supreme Court in 1972 (*Holt v. Richmond*, 408 U.S. 931).

In 1971, the United States Supreme Court held that annexation falls within the domain of the Voting Rights Act. Section 5 of the Act states that all states are required to clear proposed annexation with the U.S. Department of Justice. Between 1971 and 1992 only 518 annexations were denied out of 35,081 proposed. (Rusk, 1995). Many of these denials were changed after the cities altered their political system from at-large
districts to wards. This municipal underbounding because of race
demonstrates that race relations, especially in the South, have become
more spatially related (Aiken, 1987).

As the use of annexation to expand city boundaries has increased
many cities are being very careful to follow these laws. Other criteria are
open to debate since each annexation has its own set of issues. The issues
that might be considered in contested and uncontested annexation
proposals have been established over the years. But, this does not mean
guidelines have been set forth that must be strictly followed. As each case
is considered it has become more apparent that the best interests of the
county, city, and the area to be annexed all must be taken equally into
account. A high degree of flexibility must be maintained in order to deal
with the problems contained within each proposal.

**Implied Criteria**

There are only two criteria, discussed above, that are direct legal
stipulations on annexation. Even so, the courts have identified other
implied criteria that must be present for an annexation to take place. The
first criterion is the city's need for additional territory. The need for
governmental services, a “community of interest”, and financial factors are
also reasons for annexation.
**Additional Territory**

The land available for development within a city greatly affects its density. As cities become denser, less land is available for development. Because people do not like overcrowding some move to less populated suburbs to build homes. Since the city is already densely populated very few lots are available for development, and those that are available may be positioned in undesirable locations or require extensive rehabilitation before construction can occur. For instance, a citizen who wants to build a middle to upper income home and finds only unsuitable areas, such as intense industrial or commercial zones, starts looking for land outside of the city boundaries where suitable lots can be found. Along the same lines, large manufacturing firms also have the same type of problem when looking for large areas of land for factories, warehouses, etc. When only small lots scattered over a large area are available, development is very difficult.

Proving to the courts that the city needs additional territory can usually be done by citing specific instances, such as those mentioned above, in conjunction with showing population trends and land use patterns. Population densities are given to show that the city is filling up and is reaching a point where it cannot grow unless additional territory is annexed. The land use data shows the city needs more vacant land for this growth (Bain, 1966). It is also important to show that the territory to be
annexed is increasingly being used for purposes other than agriculture, which could create the need for additional governmental services outside the boundaries of the city.

**Governmental Services**

As more people settle outside the city boundaries a need for additional services arises. The city has an intense interest in making sure the services provided to these satellite communities are ample. If the development located outside the city limits does not have sufficient fire protection this puts the city in danger. An area without appropriate services can cause various problems ranging from police and fire problems to sewer back-ups. The city has the right and duty to protect the health and welfare of its citizens by annexing adjacent territory.

Many citizens oppose annexation because they feel that they do not need or desire the additional services the city is going to provide. Mostly this is an excuse to hide the real reason they are opposed to annexation: they do not want the increased taxes. Individual residents usually raise this concern, but the courts have ruled that it is not a question of whether an individual resident needs the services, but whether the area in which he lives needs it. However, this is not to imply that the courts completely disregard the interests of the residents to be annexed. The courts must consider what is in the best interest of the territory to be annexed, and what services that area needs. The proposed extension must be considered
as a unit and the objections of an individual resident should not control the passage of the annexation proposal.

Another group that often oppose annexation consists of the industrial and business interests located within the area to be annexed. Generally the major issue concerning this group involves possible additional controls and regulations without additional benefits, but, as with residents there may also be concerns with additional taxes for services they feel they do not need. Again, it is the welfare of the public which becomes the over-riding factor in whether or not the annexation is necessary. Regulation and protection from harmful practices are of benefit to the residents of the territory to be annexed as well as the city. The ability to prohibit the creation of obnoxious fumes or smoke, regulate traffic, and take precautions against fires is important to the general health and welfare of a city. The welfare of the entire territory to be annexed as well as the adjoining city is again of higher priority than the concerns of just a few.

When the county opposes an annexation it is usually an issue of whether the city or the county can provide the best services. When it can be shown that the county is not able to provide adequate services this decision is easy. But, many more counties are becoming urbanized and therefore more proficient at providing services. In instances of this sort a close look is taken at whether the city can meet the demand that the newly annexed territory will put on its resources. In some cases the county is
better suited to continue providing the services. The burden of proof is left to the city and county respectfully and is sometimes debated heatedly. As development takes place in the county it is sometimes directly due to activities within the city, which can be defined as a community of interest.

**Community of Interest**

An annexation can also be justified when a fringe area has developed around a municipality and the two have strong social and economic ties (Bain, 1966). Many of the citizens of the territory to be annexed derive their living directly from the city, they use the streets, shop, worship, and participate in recreational activities sponsored by the city. If the citizens of the territory to be annexed are using these services, paying for them only seems fair. Basically, a situation of this sort occurs when the city’s ‘natural boundaries’ have outgrown the ‘legal boundaries’. An annexation would bring these into alignment. This benefits both the area to be annexed and the city. Not only does the territory receive the services it needs but the city obtains the financial reimbursements for the services already being used.

**Financial Considerations**

As noted earlier, an increase in taxation for the residents and industries in the territory to be annexed is not a valid basis for denying an annexation proposal. Annexation proposals will also not be denied merely because the county would loose tax revenues, nor should they be approved
just to increase the city’s revenues. Although in every annexation case the county does lose revenues it is only expected to be temporary. The annexation is expected to stimulate growth in the area so that in a short time the values of the land still left to the county will make the loss insignificant. The financial effects of annexation must be considered in the light of what is in the best interests of the parties affected by the annexation.

Another financial consideration is whether or not the city can afford to annex the territory. The city must consider all of the financial obligations that are undertaken when an annexation is approved. The county must be paid for the capital improvements that have already been made, as well as the capital expenditures that must be made for the area after annexation. Also, the cost of extending municipal services throughout the area must be carefully considered. Most cities expect to spend more funds on the newly annexed area than they collect during the first five years. The absorption of these costs by the city for a few years is not out of line, but stretching it out over many years will allow the counties to raise questions as to whether annexation is appropriate.

Each city must prove its own reasons for annexation. These criteria are not meant to stand-alone, but in combination they present strong cases for annexation. Each annexation proposal has its own set of issues that must be considered when presented to the City Development Board.
Summary

The different types of annexation laws have been found to make a difference in how quickly cities can annex land. Iowa uses the Legislative Determination approach which is carried out in the decisions of the City Development Board. There are several types of annexation in Iowa. These types are voluntary annexation, 80/20 voluntary annexation, voluntary annexation within two miles of another urbanized area, and involuntary annexation. Each type has specific requirements for application that must be met. Every annexation has its own concerns from the residents and no set form of criteria for when an annexation should take place.

As annexation has become popular several criteria have been developed to determine when annexation is appropriate. The creation of an island through an annexation and annexing land according to racial prejudices is not allowed. The other criteria have been developed through judicial decisions but have no set formula. The need for additional territory for growth and the provision of governmental services are two possible criteria, as well as the financial considerations of a larger tax base to cover infrastructure development costs. A community of interest outside the city boundary that use the city resources but does not pay the taxes are also a criteria for annexation.

The next chapter will look at four different case studies from the Des Moines metropolitan area. The issues surrounding each case create
interesting problems for the City Development Board and the Iowa annexation statutes. An analysis of what criteria were used and the type of annexation will be completed. Also, how these cases created problems with the current statutes will be identified.
CHAPTER THREE

CASE STUDIES

Introduction

Many interesting annexation cases have been brought before the Iowa Courts over the years. Some of these cases show how the system works and sometimes how the system does not work. This chapter reviews four cases for which the system did/did not work as intended. The first case involves the objections of the residents in the proposed annexation area. This case is important because the objections relate directly to the annexation criteria discussed in the last chapter. The third case study is an interesting example of how the system can be manipulated. The other two cases exemplify interesting problems cities are beginning to have with the annexation statutes. These problems will be identified in this chapter.

In examining these different cases it is important to understand the history of each one. For each case a history will be reviewed and the issues of concern, as stated either by the citizens or by the court, will be identified. Citizen's concerns will be addressed and whether the courts acknowledged them as legitimate. Finally, a comparison will be made between the criteria stated in the last chapter and the issues of concern stated by the citizens or by the cities involved in the annexation.
Deer Creek Homeowners Association vs. City Development Board

Case History

In November 1990 the city of Urbandale filed a petition for involuntary annexation of a nearby-unincorporated area. Deer Creek is an area of about one hundred and fifty acres containing approximately fifty upscale houses. The subdivision of Deer Creek formed an island within the city that violates the Code of Iowa. In April of 1991 a public hearing was held in compliance with the annexation statutes. It was at this time however, that a new amendment was being added that increased the City Development Board from three to five members. The three-member Board approved the annexation proposal in July, 1991.

In August of 1992 the district court remanded the decision for consideration by the expanded Board per request by the citizens of Deer Creek. Deer Creek then filed a motion to dismiss the annexation proposal, since the prescribed 90 days had expired since the initial filing as set forth by the Iowa Code. The Board denied the motion to dismiss and held a second hearing in December 1993. The Board then received a letter from the Urbandale Sanitation Sewer District that addressed the district’s ability to provide services to the Deer Creek area. In January the Board voted to approve the annexation and denied Deer Creek's application for a rehearing.
Deer Creek then filed a third petition for judicial review. This petition included four reasons why the annexation application should have been dismissed: 1) there was no valid decision within ninety days on the initial public hearing, 2) a rehearing should have been granted concerning whether the sewer district has the ability to offer services to Deer Creek, 3) the citizens of Deer Creek felt Urbandale could not provide them substantial services that were not already enjoyed and that the Board erred in their judgment of this, and 4) the annexation was solely to increase tax revenues. The district court reviewed the petition, ruling in favor of the Board. The citizens of Deer Creek subsequently appealed (No. 95-0228, 1996). This appeal was denied.

**Issues of Concern**

The first issue of concern stated by the citizens of Deer Creek is that the petition for involuntary annexation should have been dismissed because the Board did not approve the petition within the time allotted by section 368.19 of the Iowa Code. This section states that the Board should approve or disapprove the petition within ninety days of the final hearing. In addition, the statutes also require that the decision be promptly filed and notification of the decision be given to all of the involved parties. Deer Creek states that the Boards' first decision to approve the annexation was negated by the district court's ruling in August, which stated that the expanded Board should review the petition. Thus, according to Deer Creek,
the petition should have been dismissed and the second hearing never held.

As the appeals court reviewed the decision of the district court it found that the district court did not reverse the Boards decision but that it remanded it for review of the expanded Board according to the transitional provisions provided. This transitional provision stated that any pending petition before the Board on or after April 1, 1991 should be remanded for review by the expanded Board. The legislature foresaw that some of the pending annexation petitions would not meet the ninety day time requirement and took steps to have these cases re-reviewed. In cases where the provision was activated, the ninety-day time period would run from the time of the rehearing. In this case, the Board approved the initial petition within ninety days of the first hearing and again within ninety days of the rehearing. Therefore the Board acted within the boundaries of the ninety-day limit for both hearings and the district court correctly applied the law and was correct in not dismissing the petition.

The second issue of concern for Deer Creek was the fact that additional information was submitted to the Board after a decision had been made. A letter from the Urbandale Sanitary Sewer District was attached to a brief that was submitted after the second public hearing. Following the filing of the opinion, Deer Creek sought a rehearing and contended that it was inappropriate for the letter to have been considered
by the Board. The rules that cover the admission of evidence after the close of a public hearing but before the final decision say that the Board may call for additional information to be presented by the parties concerned. All parties shall be given a copy of this information and have an opportunity to respond either orally or in writing. Deer Creek had a copy of the letter prior to the Board's decision and did not object or comment on it until after the Board had made its decision. The contents of the letter were consistent with information already submitted at the public hearing and a rehearing was not warranted on the issue.

Another concern of Deer Creek citizens was that this annexation would not provide them with services they did not currently enjoy; that is, they would get no additional services for the increased tax burden. However, as the court reviewed the issue, it became apparent that several types of services would be provided for Deer Creek, and that their contention was not necessarily true. Deer Creek used septic systems, and information provided by the Urbandale Sanitary Sewer District showed that Urbandale would provide sanitary sewer systems. Evidence also showed that Deer Creek could obtain water from a line put in just south of the development by the city of Urbandale. Deer Creek contracted for fire and police protection from Polk County, and there was evidence that Urbandale could provide faster and better skilled services. This evidence as well as other smaller examples, support the finding that Urbandale could provide a
greater degree of municipal services than the citizens of Deer Creek currently enjoyed.

The final concern raised by Deer Creek was that the annexation decision was solely motivated by Urbandale's desire for a larger tax base. The courts do not believe that cities wish to annex land solely for the purpose of providing services. While increased tax revenues may be a factor for annexation, the Iowa Code requires that the city's motive not be based solely upon increased tax revenues. Also, when it is found that substantial services can be provided by the annexation it negates the concern of an annexation being solely to increase tax revenues (Scase, 1997). The courts also upheld the annexation statutes express criterion for the elimination of islands.

Criteria Comparison

Deer Creek had many concerns throughout this annexation. Most of the objections used by Deer Creek have been used by other residential groups and will continue to be used when an annexation is opposed. One of Deer Creek's objections was that Urbandale could not provide services the residents did not already enjoy. In fact, Urbandale could provide various services the residents did not have and provide better service for fire and police protection. This nullifies their argument as well as the fact that Deer Creek was claiming Urbandale was annexing the territory solely for an increased tax base. Urbandale could provide a significant
improvement in services to validate the increase in taxes. Also, Deer Creek was a community of interest for Urbandale. Many of the residents worked, shopped, and used the recreational facilities located in Urbandale. This also validated the increase in taxes.

As annexation was being debated, the State Legislature wanted all islands eliminated. Deer Creek fit into the Urbandale city limits and provided a more contiguous city boundary. Deer Creek did not want to loose their community identity by becoming a part of a larger entity. This is a valid concern but not a valid reason to prevent annexation. If any of the concerns raised by Deer Creek were the only reason Urbandale was initiating the annexation, then the annexation would be invalid. But, when one of these concerns raised by Deer Creek was shown to be invaled the entire argument for a frivolous annexation falls apart.

**City of Waukee vs. City Development Board**

**Case History**

This case was resolved in March of 1994. The city of Waukee filed an appeal to the Supreme Court of Iowa with the City Development Board cited as a respondent. The city of Clive inserted themselves as a part of this case also because both cities had an interest in annexing the same land.

The cities of Clive and Waukee have been in an annexation disagreement since 1990 and this case is a continuance of the initial dispute. In 1990, both cities became interested in the same land for
different reasons. Clive was and still is worried about being land locked by the growth of other cities and had been submitting involuntary annexation requests to the Board for approval, as well as eighty/twenty annexations for some of the same territory. However, some of the residents within these territories realized that they would rather be a part of Waukee than Clive and, as a result, petitioned Waukee for voluntary annexation. In order to meet statutory deadlines, Waukee needed to file voluntary annexation petitions within the thirty-day period, the grace period for cities that desire to annex land being annexed by another city. These voluntary annexation petitions were filed between April 25, 1990 and May 8, 1990.

These applications were still pending in November 1990, at which point Waukee filed with the Dallas County District Court to have them approved by the Board. The district court denied this request, and Waukee filed a petition for judicial review. It is important to note that this all occurred before June 10, 1990, the date when the Iowa legislature amended relevant parts of the annexation statutes.

One of the revisions was a new section that gave due consideration to the wishes of the citizens in a territory to be annexed. It presumes that a voluntary annexation more closely reflects the wishes of the citizens and the approval process should therefore include this assumption. Consequently, when one or more applications for a voluntary annexation and one or more petitions for an involuntary annexation for a common
territory are received, the Board should approve the application for voluntary annexation. These competing petitions must be filed within thirty days of each other and the applications must meet all of the requirements. The Board may refuse to pass the voluntary annexation petition if it is determined that the petition was filed in bad faith, is actually contrary to the best interest of the citizens in the territory, or the city cannot provide public services to the territory within a reasonable time. The decision of the Board must be made within ninety days of receipt of the application. If the Board does not make a decision within the ninety days it is subject to judicial review, where the review is limited to the testimony and documents presented to the Board prior to issuing its decision on the voluntary annexation. The new legislation also changed the Board from a three member Board to a five member Board. But, most importantly, it provided a retroactive deadline for annexation petitions. Any petitions pending before the Board on or after April 1, 1991 were remanded to the expanded Board for review.

The city of Waukee, viewing the revision by the legislature as direction to the Board to approve their pending petition, dismissed its petition for judicial review in belief that the voluntary annexation would be granted.

Waukee filed for another judicial review on October 4, 1991 since the Board had taken no action. This petition alleged that the Board did not
approve its annexation petition within the ninety-day period provided by the statute. The court concluded that this ninety day period started on July 5, 1991, the date the Board itself remanded the applications for review by the expanded five-member Board. The district court then ruled that Waukee had pursued all of the administrative solutions available and that the ninety-day limitation prescribed a mandatory obligation on the Board to respond to the application. Since the Board made no response to the application, simply deferring it for review was not adequate for Waukee, so the court remanded it for approval only (No. 92-886, 1994).

Points of Law

The Iowa Code provides the option of judicial review for a person or party who has used all administrative remedies and feels they have been wronged by the final action of an agency. This applies where the complete administrative process has run its course. In this case the process is established under chapter 368 of the Iowa Code and the question is whether the full process established by this chapter was completed before the district court exercised jurisdiction over the matter. First, the effect of the new additions to the annexation statutes must be determined and then whether the Community Development Board received Waukee’s annexation proposal within the time frame written into these changes.

The different parties in this case have developed arguments as to whether the additions to the statutes are directory or mandatory. Waukee
claims the Board had to act on the voluntary annexation petition within ninety days. Clive and the Board say that it was a discretionary decision. The difference between mandatory and discretionary statues lies in the consequences of the party's failure to perform the duty. In this case the Board failed to take any action whatsoever on the application, and the court ruled that this was unacceptable.

Nevertheless, the court recognized the fact that there was a distinction between voluntary and involuntary annexation. The annexation statute's main objective is to facilitate the quick approval of voluntary annexations. The new additions to the statutes can only be seen as an attempt to further this objective. The fact that Waukee and Clive's annexation battle over the Board's delay falls in the time that the legislature passed the new statutes furthers the idea that the Board should have made a decision concerning the application. Since the legislature did not intend the suspension of the Board's authority while new members were appointed, business could have proceed as usual. The court found that the Board legally received Waukee's application for voluntary annexation on June 10, 1991 and the Board had until September 8, 1991 to act on the application. On October 4, 1991 Waukee filed a petition for judicial review. The court found that the Board's failure to approve the voluntary annexation application pursuant to the new statutes was deemed the final agency act that is subject to judicial review.
The judicial review in this case is looking at the inaction of the Board. Being an agency of the State the Board is required take some action. The Iowa Administrative Procedure Act defines the term ‘agency action’ to include a decision not to act or the failure to act or perform a duty. A refusal to act will also mean that there are no findings of fact or legal conclusions. Under the statutes, the judicial review is limited to the testimony and documents presented to the Board prior to them issuing their decision. The inaction of the Board meant there are no reasonable findings of fact to aid the judicial review.

The Iowa Code allows a court to reverse, modify, or grant any relief from the agency action with pronounced directions. Therefore, the district court held that the Board’s failure to act left Waukee without closure. The court remanded the case and ordered the Board to approve the application. The Board claimed the court exceeded its bounds by so ordering, while Waukee contends the court was simply upholding the new statutes. However, the higher court stated that the legislature did not intend that the new statutes be used as a self-executing process for voluntary annexations. The decision to approve the application still lies with the Board. The court then remanded the case back to the Board with directions to either approve or deny Waukee’s annexation application, giving them a deadline of sixty days to do so.
Criteria Comparison

The focus of this case is on changes to the existing annexation statutes and how they affected the on-going annexation battle between Clive and Waukee. Waukee’s voluntary annexation proposal fell within the criteria set forth in the previous chapter. The annexation did not create an island, was not racially motivated, and the city could provide additional government services. And, since it was a voluntary annexation the territory could be seen as a community of interest for Waukee. Since Clive also filed a voluntary annexation proposal for some of the same territory the same could be said about their proposal. This is where the new nuance of the eighty/twenty voluntary annexation makes annexation difficult for all parties involved. A possible solution to this problem will be discussed later.

Charles W. Gorman vs. City Development Board

Case History

In April of 1995 the Roemig family filed a request to be annexed to the city of Cedar Rapids. The request included about 120 acres located northeast of the city. A map and legal description were included with this request, as outlined by the city’s guidelines for annexation. The written legal description included in the application had a typographical error, although the map and its description were correct. The typographical error
went undetected until the City Development Board reviewed the request. (See Figure 3.1).

After the application for annexation was received by the city the Cedar Rapids City Council published a public notice in the paper, as required by the Iowa Code, which contained the legal description from the application letter, including the typographical error. Also included was a cross-reference to the annexation application on file with the city clerk that contained the map and the correct legal description. In June, the Board held a hearing on the proposal and informed the city that annexation of this property as it was legally described it would cause an island. The error was found, and with the approval of the Roemigs and a representative from the city present, the Board approved a modified written legal description that corrected the typographical error as well as eliminated the problem of an island.

In the written decision issued in July 1995 and filed with the Linn County Recorder in August, the Board approved the annexation. In this decision the Board confirmed that a written application which included a map had been filed with the city, the city published a notice, the Board had jurisdiction to approve the annexation, and that the city's request for approval was in compliance with the administrative rules of the Board. The typographical error was corrected in the legal description attached to the decision.
Diagram A—

The shaded area depicts land owned by the Roemigs.

Diagram B—

Shaded area depicts land described in the legal description with the typographical error.

Figure 3.1 Roemig Diagrams
At this point, within the allotted time, Mr. Charles Gorman filed a petition for judicial review. This petition challenged the Board’s decision in light of the typographical error. The District Court upheld the Board’s decision and found Gorman’s arguments without merit following a briefing of issues and the presentation of oral arguments. Currently, the case is being appealed to the Iowa Supreme Court by Mr. Gorman (Appellees’ Brief, No. 96-602).

**Issues of Concern**

Gorman insists that the typographical error is sufficient to invalidate the annexation application and prevent the Board from acquiring jurisdiction over the matter. Gorman further contends that it was improper for the District Court to find that the annexation application was in compliance with the statutes when an express finding by the Board that addressed the error was lacking. However, in its findings the Board stated that the necessary written application and map were filed with the city and proper notice had been given. It ruled also that in spite of the error on the front page, the map and accompanying legal description made the error on the application insignificant.

This annexation was purely voluntary, which means it was initiated by the landowners. They followed all legal criteria for the application and, perhaps more importantly, precedents have already been set by similar cases. In the case *Town of Menasha v. City of Menasha* 168 N.W. 2d. 161
(Wis. 1969) a legal description error similar to this occurred. The court found in that case that the error in the description was obvious and the rest of the description and accompanying map clearly pointed out the error and facilitated the annexation.

Gorman's case is frivolous and the real reason behind his disapproval has to do with the intended use of the newly annexed property, according to attorneys close to the case. Currently, Gorman owns and operates a manufactured housing development located on the east side of Cedar Rapids, one of the few developments of this kind within the city limits. The Roemig's land is also going to be used for a manufactured housing development but on the north east side of town. Gorman does not want competition (Brief of Amicus Curiae, No. 92-602).

**Criteria Comparison**

The Roemig's filed a petition with the city of Cedar Rapids for voluntary annexation. Obviously they thought through the financial obligations that annexation would entail and proceeded with the application. They believed the city could provide them with additional governmental services they did not enjoy, were a community of interest for the city and provided the city with an additional type of housing that was not prevalent. These are the criteria stated in the previous chapter for annexation therefore, this annexation should take place. The only problem was a slight typographical error and a difficult business competitor.
Hiawatha vs. City Development Board

Case History

This case is extremely current, briefs have yet to be filed and the court has not heard the case. In the spring of 1996, the city of Hiawatha completed an initial finding for a new comprehensive plan. Somehow the local newspapers found that Hiawatha had plans to grow west and eventually annex land in that direction. Hiawatha had not published the plan, started public hearings on the comprehensive plan, or even adopted it. On December 16, 1996 the Community Development Board received an application for voluntary annexation by the city of Cedar Rapids for most of the land directly west of Hiawatha. The citizens of this area had petitioned Cedar Rapids for annexation.

At the next Board meeting on January 16, 1997, a petition for involuntary annexation from the city of Hiawatha was received that included the land in the voluntary annexation by Cedar Rapids. On the same date, the Board received another voluntary application for more land by Cedar Rapids, an eighty/twenty voluntary annexation application for land north of Hiawatha from the city of Robins and an eighty/twenty annexation from the city of Hiawatha. All of these applications had land in common. On January 29, 1997 the Board set the hearing date of February 19th and 20th for all of the voluntary annexation applications and the eighty/twenty applications.
The Board approved the first voluntary annexation application submitted by Cedar Rapids, most of the eighty/twenty annexation for Robins and some of the eighty/twenty annexation for Hiawatha. The Board denied the second voluntary annexation request made by Cedar Rapids because it would create an island. The Board also tabled the involuntary annexation request submitted by Hiawatha because they foresaw the legal battles to come and took steps to curtail repetitive litigation. Currently, the city of Hiawatha has filed an appeal against the Board's decision to approve Cedar Rapids voluntary annexation (Scase, 1997).

**Issues of Concern**

There are several different parties involved in this case. Hiawatha, Cedar Rapids, Robins, and the residents of the land to be annexed by all three are intensely involved in all matters. Most of the concern lies with just two of these, Hiawatha and the residents. Hiawatha's main concern is becoming land locked by Cedar Rapids and Robins, and was the reason Hiawatha initiated a new comprehensive plan. Currently, Cedar Rapids surrounds Hiawatha on the south, east, and if the new annexation is considered, on the west as well. The city of Robins adjoins the city of Cedar Rapids on the east side of Hiawatha and runs north of Hiawatha until it almost meets Cedar Rapids again on the west side. The new annexations that have been approved provide Hiawatha with limited new territory and virtually no direction to grow.
The residents located to the west of Hiawatha filed for voluntary annexation to the city of Cedar Rapids because they do not want to be a part of Hiawatha. They believe that Cedar Rapids can better provide the services they need. Also, they would rather be a part of Cedar Rapids than Hiawatha because of the community image (Scase, 1997). It was only when individual residents initially approached Cedar Rapids requesting annexation and were told that a contiguous parcel must be part of the annexation that they created a parcel that nearly surrounds Hiawatha. See Figure 3.2.

**Criteria Comparison**

The residents had obviously thought through the implications of annexation and considered each of the communities interested in annexing them. These residents could be communities of interest to Hiawatha, Robins, or Cedar Rapids. As this case presented itself to the Board, many considerations must be made. The residents applying for voluntary annexation obviously want to be part of Cedar Rapids rather than Hiawatha. The reason sited for this preference has been that Hiawatha could not provide adequate services. However, the city of Hiawatha was not proposing to annex a large area within a short amount of time, it was only preparing a new comprehensive plan that outlined growth to the west in gradual stages over many years. This situation only turned
Figure 3.2—Hiawatha/Cedar Rapids Map
into a "land grab" when Hiawatha was forced to submit reactionary annexation applications to compete with Cedar Rapids voluntary annexation applications. Otherwise, all of the criteria stated in the previous chapter have been met.

**Summary**

Two of the cases provide interesting problems for the annexation statutes. In *Waukee v City Development Board*, the issue of competing voluntary annexation applications is considered. This situation is becoming more prevalent as more cities expand and compete for land.

In the Hiawatha case, the city was forced to file involuntary annexations to compete for land. The issue of eighty/twenty annexations has also caused many problems for this case. As cities find large landowners for the eighty the little landowners may feel different but get pulled into an annexation where they do not necessarily want. The issues will be addressed more closely in the next chapter and possible solutions will be offered.

The Deer Creek case is an ideal study of the issues raised in most involuntary annexations and provides a prime example of the criterion that must be present for an annexation to occur. The Roemig case study is an interesting use of the annexation statutes and was presented as an example of how the statutes can be abused.
CHAPTER FOUR
PROBLEMS AND SOLUTIONS

Introduction

In the previous chapter four different cases were discussed. Two of these cases present interesting and pertinent problems for the annexation statutes while the other two cases show how the criteria for annexation must be present. Of these four, the first two cases are most important because they have shown how the growth of communities has created additional problems for the City Development Board and highlighted weaknesses in the annexation statutes. The annexation statutes still treat Iowa communities as if they are mostly agriculturally based. This facilitates conflicts between cities that are trying to annex the same territory. As more cities grow the more frequent this problem will become. Thus, the sooner these issues are resolved, the better for everyone.

This chapter will take two of the problems identified in the last chapter and discuss them in depth. These problems will be defined and it will be shown how they have become increasingly apparent using examples from the case studies discussed earlier. Finally, suggestions will be given for solving these problems.
The first problem to be discussed is how the eighty/twenty annexation statute creates problems for the City Development Board, the cities wishing to annex, and residents of the territory involved in the annexation. The second problem, which is currently creating numerous problems for the City Development Board, is that overlapping annexation applications by competing cities. First, a closer look at the problems associated with the eighty/twenty annexation statutes.

**Eighty/Twenty Annexation**

In 1993 the state legislature passed a statute (Section 368.7) that allows cities to apply for voluntary annexations in a unique way. The city may apply for a voluntary annexation as long as the owners of eighty percent of the land included in the application want to be a part of the city. The other twenty percent could then be technically classified as an involuntary annexation, but that would not affect the application's status as a voluntary annexation application. This type of annexation must be approved by four-fifths of the Board after a hearing for all affected property owners and the county has been held.

The addition of this type of annexation allows cities to make more uniform boundaries and facilitates a faster annexation process. Unfortunately, it allows cities to pull in small landowners through strong-arm techniques. It allows cities that are competing for land to submit eighty/twenty annexation applications for land where the owners would
rather be a part of a different city. As a result, the wishes of the smaller landowner are not being heard by the Board and are essentially being ignored by the city that is submitting the application. Sometimes landowners will have strong emotional ties to a city other than the one which is annexing them. Along similar lines, some landowners might not want to be annexed at all, but would at least like a choice of city if annexation is the only option.

Conflicts such as these concerning the eighty/twenty annexation have become more prevalent within the last few years. A perfect example is Clive/Waukee case study.

**Examples**

Looking at the different case studies has revealed the extent to which some cities will abuse the eighty/twenty annexation in order to acquire additional territory. The cities of Waukee and Clive have been fighting over the same territory for years. Recently, the city of Clive submitted an eighty/twenty annexation application for land located directly north of Waukee. This application included an eighty-acre parcel of land whose owners want to be annexed to Clive, and constitute approximately the eighty percent necessary for voluntary annexation. The problem stems from the fact that the other small bridge connecting the city and the eighty acres of land. If not for this twenty percent bridge, the eighty acres would not be connected to Clive and not be eligible for annexation. Most of the
landowners in the twenty percent of this annexation have expressed interest in being part of Waukee instead of Clive. Waukee has also submitted its version of an eighty/twenty annexation application including parts of the same territory.

As the Board reviews cases it has to act on the first voluntary annexation application received. This forces the Board to make decisions they would not make if they were allowed to analyze the situation as a whole. It also allows cities to submit voluntary annexation applications when not all of the landowners consent to the annexation. The most significant problem, however, is that cities are finding large landowners to use for the eighty percent of the annexation and using these large landowners to force small landowners into annexation.

**Solutions**

The legislature provided cities with a useful tool when implementing this type of annexation. The concept is insightful of how annexations need to work. In some cases landowners just do not want to be annexed and this statute helps cities continue more uniform boundaries, eliminate the possibility of islands, and further the goal of smart planning.

Unfortunately, cities have started using this statute in a way that contradicts the spirit of a voluntary annexation.

One solution for this problem would be to require that the smallest parcel included in the annexation proposal be a set percentage of the
largest parcel. For example, in the case of Clive or Waukee, the cities were using the largest landowner as a vehicle to annexing the smaller resistant landowners. (See Figure 4.1) So, in this case, making sure that the smallest lot size in the twenty percent of the annexation application was actually, for example, thirty percent of the total area of the eighty percent could have prevented the annexation, where thirty percent is just an arbitrary number, used for demonstration purposes. Finding a workable number for this use would involve an in-depth study by the City Development Board and approval by the state legislature. This solution facilitates the use of eighty/twenty annexation and also retains the essence of the annexation being voluntary.

A second solution for this problem is to allow the City Development Board to create comprehensive plans for areas within the state. As the state has seen more incorporated areas growing into each other, land has become a valuable commodity and acquiring it has resulted in long, complex legal battles. Funding the Board and giving it the authority to avert these legal battles is another possible solution.

Planning

Section 368.13 of the Iowa Code states that the Board may initiate proceedings for incorporation, discontinuance, or boundary changes of a city. The Board may request that a city submit a city development plan
Figure 4.1—Map of Waukee/Clive Annexation
which conforms to the existing guidelines. The City Development Board may even create their own plan if they so choose, in which case the cities involved would be required to comply with a submitted plan as if the cities had suggested it themselves.

Currently, when there are numerous annexation applications on the table the Board must look at the voluntary annexations first. As a result, annexations are sometimes approved because the city happened to submit an eighty/twenty annexation application before anyone else, and not necessarily because the annexation is the most beneficial for the landowners and the communities involved. The Board also approves voluntary annexations before looking at other annexation applications. When an annexation application is submitted and another city wishes to annex the same land that city must submit an application within thirty days of when the first application was filed. This creates the problem of having several annexation applications involving the same land in front of the Board at the same time. Recently, there have been instances when the implementation of an independent plan would have saved many court battles and a lot of time.

Examples

Clive and Waukee are one of the best examples of how advanced planning by an outside entity would have benefited all parties concerned. As Clive and Waukee have fought over land, hostilities have grown between
both cities, neighbors, and also between the cities and the annexed landowners. Some of the landowners feel that their opinions were not taken into consideration when decisions were made. Having the Board develop plans for the areas between Clive and Waukee would have given ample opportunity for discussion as to how the division should be made according to the criteria set forth in Chapter Two. The Board could look at which city could best meet the needs for the residents to be annexed. These residents would then be designated as part of the city that could provide the best fire and police protection, sewer and water service, etc. The Board would look at which residents are communities of interest to either Clive or Waukee as well as create more uniform boundaries for each city. Looking at the criteria and then matching the territory in question with the city who fits the land owners needs would provide a more logical and systematic approach than what is currently occurring. It would also provide a quicker and less expensive solution than letting the cities fight in court.

Another example of how letting the Board develop city plans would decrease the conflict over annexations involving the same territory is obvious in the Hiawatha, Robins, and Cedar Rapids case. Having the Board develop an impartial development plan for the conflict area would have been more beneficial than letting the annexation applications go through the normal channels. If the Board had created a plan taking into
consideration all of the criteria previously mentioned, these cities would not be spending the next few years in court. Hiawatha has no place to grow and is fighting for its survival in the Iowa courts.

The example also reiterates the need for more specific guidelines for the eighty/twenty annexation. The city of Robins had submitted an eighty/twenty annexation application for land located along its northeastern border. One of the landowners preferred to be a part of Hiawatha but was still included in the Robins annexation application. Hiawatha also submitted eighty/twenty annexation applications for about the same area. Pieces of the land were awarded to Hiawatha and some to Robins after all the hearings. Currently, Hiawatha also has an involuntary annexation tabled and waiting on court decisions. The power of arbitrary planning for the Board could also save other cities from the frustration and expense illustrated in these cases.

**Solutions**

The reason the Board has not been able to develop their own annexation plans have been because of a lack of funding. The state legislature has not designated appropriate funds to the City Development Board that would allow them to hire a consultant to develop these plans. Even if one of these areas could be studied per year it would provide the Board with the needed plans so complex annexations would not be as time consuming and expensive. If the legislature would give the Board
designated funds for the development process of city plans the Board could prioritize the areas they feel will require arbitrary help with city
development. The Board could then hire a consultant to create city
development plans for the area in question. Obviously using a consultant
who has no emotional or monetary ties to the area would be essential to
maintaining impartiality.

Another more feasible solution would also require the legislature to provide the Board with funds but with an equal or smaller amount. The Board could work in conjunction with the state universities and have graduate students and undergraduates complete the plans under the supervision of an instructor or consultant. This would benefit both entities. The Board would have finished, impartial plans for implementation around the state, while the students involved in the process would gain valuable planning experience and supplement their portfolio with a unique city development plan. Considering that there are more and more annexation disputes arising between cities, implementing this solution would save the state money in the long run and aid in the education of planning professionals.

Summary

Since annexations in Iowa have become more complicated some problems have become apparent in the annexation statutes. More cities are using the eighty/twenty annexation to bring in additional territory.
This statute is an excellent idea but has been abused by several cities and therefore needs some modifications. The state legislature implemented this statute with the intent to make voluntary annexation easier, not to facilitate the use of strong-arm techniques to annex land. If an appropriate solution could be implemented the spirit of a voluntary annexation would be more easily realized. Regulating the way the eighty percent portion of the annexation is defined compared to the smallest lot of the twenty percent, is one solution. Another is allowing the City Development Board to create its own city development plans for problem areas.

The City Development Board is given the legal power to implement its own plans but lacks the funding to do so. Allowing the Board to develop plans would curtail the abuse of the eighty/twenty annexation as well as provide an alternative for cities that would otherwise spend years in court. The development of arbitrary plans by an outside agency would also take the pressure off the Board when complicated annexations came about. Solving these two problems in the annexation statutes would provide a much more uniform, consistent, and efficient annexation procedure across the state.
CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

Introduction

As is apparent from the previous four chapters, the situations surrounding the growth of cities has become very complicated since many cities are now competing for the same land. The regulation of this growth has become controversial since the Iowa annexation statutes treat communities as though they are rural in nature. As a result, many innovative situations have been brought before the City Development Board and the Iowa courts. This chapter will highlight important facts and clearly state recommendations to improve the existing statutes discussed in this study. Specifically, two different approaches to control cities' growth, zoning and annexation, will be examined. A brief synopsis of zoning and annexation will be followed by the restatement of the case studies. Recommendations to solve the problems identified by the case studies will then be stated.

Growth Controls

Zoning and annexation have become very important in regulating the growth of cities, especially in ones that are growing very quickly. Zoning provides cities with a set of guidelines for ordinary growth control. These
guidelines are specific and control lot size, building type and size as well as what types of usage can actually be allowed on a lot. Zoning is an important part of local governments' ability to provide for the health, safety, and general welfare of the people by providing a way to control growth within its current boundaries.

Annexation is the addition of territory to an existing city. Annexation promotes orderly growth by allowing cities to bring land and development currently outside city boundaries into and under city regulations. There are several different types of annexation in Iowa, including voluntary annexation, voluntary annexation with the territory to be annexed within two miles of a city, eighty/twenty annexation, and involuntary annexation.

Various criteria must be met for an annexation to be legal. Some of these criteria are implied in law while others are explicitly stated in the statutes and federal law. The creation of islands and racially motivated annexation or the lack thereof is strictly prohibited. Implied annexation criteria, on the other hand, tend to be defined through court cases. These criteria include the cities' need for additional territory, the need for government services in the annexed territory, whether the territory is a community of interest for the city, and the financial considerations of annexation.
Case Studies

Each of the case studies demonstrates interesting ways in which the annexation laws are being used. The Deer Creek case shows the elimination of an island in compliance with the Iowa statutes and how the citizens raised very common objections to the annexation. In Charles W. Gorman v. City Development Board it is obvious that the annexation statutes, and the criteria involved when an application is submitted, were being manipulated.

The other two cases show flaws in the Iowa annexation statutes. In both cases the eighty/twenty annexation statute is being abused. Large landowners are being used to force small landowners into being annexed in the Waukee case, while in the Hiawatha case the eighty/twenty annexation was used to respond in a land grab situation. Both of these situations could have benefited from prior planning by the Board. This is particularly apparent in light of the fact that the Board is authorized to create plans of its own.

Recommendations

The two problems with the Iowa annexation statutes identified in this study stem mostly from the fact that the statutes treat Iowa communities as if they were still rural in nature. For many of the larger cities and their suburbs this creates tension and facilitates land grab situations. As Iowa’s cities grow the City Development Board increasingly has to look at
annexation applications which involve more than one city. Because of the way the statutes are written, the Board has to make decisions without being able to consider all of the available information submitted. This creates situations where the Eighty/Twenty Voluntary Annexation is abused in order to facilitate the acquisition of land. A more sensible alternative to prevent problems of this nature is to provide the City Development Board with money to hire independent planning agencies that could develop annexation plans for these areas.

The State Legislature would be wise to take a close look at these two problems and consider submitting specific recommendations to the City Development Board, for the collective benefit of the annexation statutes, the Board, and the Iowa courts. Implementing a percentage requirement for the eighty/twenty annexation could minimize the abuse this statute is receiving. It could also help landowners become part of the city they would prefer instead of being shoved into one they do not like.

Providing the City Development Board with funds to develop plans would also reduce time the Board and the cities spend in court. Having an independent plan proposed by the Board to allocate land would have greatly benefited Hiawatha and could have kept Waukee and Clive out of court for the last seven years. The Board could hire a consultant or work in conjunction with the state universities to provide the plans. This would provide impartial plans for each community and allow the City
Development Board to make careful decisions. The Board could then prioritize the communities in Iowa according to urgency and hire an outside agency to study the communities. Then the agency could provide the Board with an unbiased annexation plan. The Board would then be able to study the document, have public meetings, make recommendations and adopt the annexation plan on its own merits and with all facts on the table.

This study has identified two specific problems with the Iowa annexation statutes. Creating a specific percentage criteria for the Eighty/Twenty Voluntary Annexation and allocating the City Development Board money for planning projects the annexation statutes would be better suited to meet the needs of Iowa’s growing cities. Reconstructing the Iowa statutes according to the recommendations in this study would increase the efficiency of the Community Development Board and decrease the caseload for Iowa courts.
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