

STATE OF NORTH DAKOTA  
*Before the*  
OFFICE OF ADMINISTRATIVE HEARINGS

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**In the Matter of:**

**Annexation of Real Property  
Pursuant to N.D.C.C. § 40-51.2-07**

**OAH File No.: 20210216**

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER**

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[¶1] The above-entitled matter came before the Office of Administrative Hearings on a Petition for annexation submitted by the City of Horace, North Dakota (the “City”). Having considered all of the files and records in this proceeding, and being fully advised of the issues in this matter, the following Findings of Fact, Conclusions of Law, and Order are now issued.

**FINDINGS OF FACT**

[¶2] The City proposes to annex four subdivisions (Fradet’s Subdivision, Lazy A Addition, Lazy A Second Addition, and West Brook Subdivision) and three rural parcels not within a subdivision (the “Annexation Area”) via resolution in accordance with N.D.C.C. § 40-51.2-07.

[¶3] The Annexation Resolution was approved by the City Council on September 21, 2020, and published in the City’s official newspaper on September 30, 2020, and October 7, 2020.

[¶4] Property owners in the Annexation Area were mailed letters informing them of their opportunity to file written protests and to be heard at the protest hearing on November 2, 2020.

[¶5] Thirty-seven (37) of the forty-one (41) property owners in the Annexation Area filed written protests against the annexation with the City Auditor within the required 30 days from the date of the first publication.

[¶6] On November 2, 2020, the City Council held the public hearing giving Annexation Area property owners an opportunity to provide public comment on the proposed annexation. Following discussion and at the request of property owners, the City Council agreed to table its

decision for two weeks. The City Council also directed City staff to conduct further analysis on the estimated cost to reconstruct Wall Avenue, a street located in portions of the City and Township.

[¶7] On November 16, 2020, the City Council again agreed to table its decision for two more weeks so the Mayor could meet with representatives of the Annexation Area.

[¶8] After the matter was left unresolved during these meetings, the City Council decided to pursue mediation at its December 7, 2020 meeting. In a letter dated April 6, 2021, the Governor appointed Patrick Ward, an attorney in Bismarck, ND (“Attorney Ward”), to serve as mediator for the annexation proceedings.

[¶9] On April 22, 2021, Attorney Ward sent a letter to the property owners in the Annexation Area informing them of mediation scheduled for June 3, 2021, at the Heritage Middle School in Horace, ND and requesting the property owners designate representatives from the respective subdivisions. However, due to the number of signatures successfully obtained by the City in advance of June 3, 2021, Attorney Ward extended the mediation date to June 22, 2021, to allow the City to continue contacting property owners in an effort to obtain additional signatures.

[¶10] Between June 3, 2021, and June 22, 2021, more signatures were obtained in the Westbrook Subdivision. Before mediation, 34 of the 41 property owners in the Annexation Area executed annexation agreements in support of annexation.

[¶11] On June 21, 2021, Attorney Ward traveled to Horace, ND to contact the remaining unsigned Westbrook Subdivision landowners and encourage their attendance and/or sign annexation agreements at or before the June 22, 2021, mediation.

[¶12] Mediation commenced at 9:00 a.m. on June 22, 2021. Mediation was attended by Attorney Ward, the City Attorney, and three City officials: Jim Dahlman, City Engineer; Brenton Holper, City Administrator; and Barrett Voigt, Community Development Director. No property owners appeared. It was agreed that Attorney Ward would provide the City until July 9, 2021, to obtain any additional signatures needed for complete consensus.

[¶13] The City was able to secure additional signatures for annexation agreements. However, as four (4) property owners still had not signed annexation agreements, the City commenced this proceeding by filing a Petition with the Office of Administrative Hearings.

[¶14] A prehearing conference was held on August 9, 2021, to identify any issues in dispute and the potential scope of the hearing. The only parties to appear at the prehearing conference were the City and one remaining objecting property owner. Based on the issues identified at the prehearing conference, the City submitted a Motion for Summary Judgment dismissing those objections. An Order Granting Motion for Summary Judgment was issued in favor of the City. Accordingly, there are no remaining objections to annexation by property owners within the Annexation Area.

#### **CONCLUSIONS OF LAW**

[¶15] The Office of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding.

[¶16] Annexation by resolution is governed by N.D.C.C. § 40-51.2-07. The City followed the plain language of N.D.C.C. § 40-51.2-07 in its annexation proceedings. First, the City adopted a resolution of annexation as prescribed under N.D.C.C. § 40-51.2-07(1)(a).

Second, the City published the resolution and a notice of the time and place of the meeting for two consecutive weeks, as required under N.D.C.C. § 40-51.2-07(b). Third, the City mailed a notice to landowners more than 7 days before the meeting, which informed the landowners of the resolution, the time and place of the hearing, and the requirement that protests must be filed in writing. The City heard the property owners' objections at subsequent hearings, and engaged in several weeks' worth of discussions with property owners to evaluate the basis of the objections. While almost all property owners consented to annexation, the City was left with no recourse but to file its Petition in this matter after some of the remaining property owners did not sign the agreement.

[¶17] In accordance with N.D.C.C. § 40.51.2-13, the following factors have been considered and favor annexation:

- a. The present uses and planned future uses or development of the area sought to be annexed. The Annexation Area is used for residential land use and is surrounded by residential land use. The City does not anticipate other land use for the Annexation Area.
- b. Whether the area sought to be annexed is a part of the community of the annexing city. The Annexation Area is a part of the community as the residents receive several City services and are able to enjoy various City amenities. The Annexation Area is surrounded by City roads, parks, schools, and commercial service areas located within a distance under a half mile. The City also provides vector control and grades Wall Avenue including the portion under the Township's jurisdiction.

- c. The educational, recreational, civic, social, religious, industrial, commercial, or city facilities and services made available by or in the annexing city to any resident, business, industry, or employee of the business or industry located in the area sought to be annexed. The Annexation Area is completely surrounded by the City's corporate limits and has various facilities and services available in the City. There are multiple parks, schools, religious facilities, commercial and industrial employment establishments, City services, and City roads that surround the Annexation Area. City infrastructure currently supports fire service for the Annexation Area. The City contracts with the Cass County Sheriff's Department for law enforcement services and has provided increased presence in the City, including the Annexation Area. Annexation Area residents also utilize the City's yard waste site/compost site on a regular basis.
- d. Whether any governmental services or facilities of the annexing city are or can be made available to the area sought to be annexed. The residents of the Annexation Area are able to utilize City planning and zoning and building permitting services as the City's zoning ordinances govern the Annexation Area. Residents are required to use City streets as they have no other access routes to and from the Annexation Area. Residents will also have the ability to connect to City water, storm sewer, and sanitary sewer services if the proposed annexation is successful; however, the City is not forcing these connections.

- e. The economic, physical, and social relationship of the inhabitants, businesses, or industries of the area sought to be annexed to the annexing city, and to the school districts and other political subdivisions affected. The residents of the Annexation Area have an existing economic, physical, and social relationship in that they participate in activities and events occurring in the City including parades, firework shows, events at the Senior Center, street dances, bar events, and church gatherings and services. Children in the Annexation Area attend school in the City as the West Fargo School District has an elementary school, middle school, and by the fall of 2021, a high school in the City. Residents are able to rent space at the Senior Center and local restaurants for events and activities.
- f. The economic impact of the proposed annexation on the property owners in the area of the proposed annexation, and the economic impact on the annexing city of a decision to deny the annexation. If the annexation is successful, it could be argued that property values in the Annexation Area will increase as these properties will receive all of the services and amenities the City has to offer including connections to water, sanitary sewer, and storm sewer. The largest benefit being that of sanitary sewer connectivity as lots in these developments have private septic tanks which are nearing their life expectancy. If the annexation is unsuccessful, it would result in negative impacts to the economic development of the City. Without the contribution of payments from residents in the Annexation Area, City residents will incur additional costs if annexation does not occur. In addition, residential lots west

of the Annexation Area would be greatly impacted as the City would not be able to provide a safe transportation route on this major thoroughfare. This would make those properties less desirable for homeowners and delay development west of the City as Wall Avenue is the main road that connects the western part of the City to the eastern part of the City across the Sheyenne River. Less desirable lots and delayed development results in less tax revenue for the City.

- g. Whether the area proposed to be annexed is in the extraterritorial zoning or subdivision regulation authority of another city. The Annexation Area is not located in an area with an overlapping extraterritorial or subdivision authority. The Annexation Area is completely enveloped within the corporate limits of the City and under the complete zoning purview of the City.
- h. Any other factor determined to be relevant by the administrative law judge.

[¶18] Under these circumstances, the City followed the statutory process for annexation and the factors to be considered under N.D.C.C. § 40-51.2-13 support annexation. Based upon these factors, I find that:

- a. The areas proposed to be annexed is now, or is about to become, urban in character;
- b. The City government in the Annexation Area is required to protect the public health, safety, and welfare; and
- c. The annexation would be in the best interest of the Annexation Area.

[¶19] Under the foregoing circumstances, and in accordance with N.D.C.C. § 40-51.2-13(3), I am satisfied that annexation should be granted.

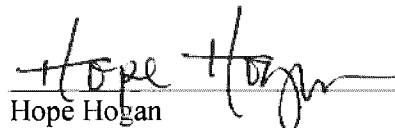
**ORDER**

[¶20] The City's Petition for annexation is granted and approved wholly, effective as of the date of this order.

[¶21] In accordance with N.D.C.C. § 40-51.2-13(3), the City Council is directed to mail a copy of this decision to all parties to the annexation proceedings.

[¶22] The City shall also file and record the order and an accurate map of the Annexation Area, certified by the executive officer of the City, in the office of the recorder of the county in which the annexed territory is situated, in accordance with N.D.C.C. § 40-51.2-13(4). The territory to be annexed is depicted on the map of the Annexation Area described in the Petition.

Dated this 29 day of SEPTEMBER, 2021.

  
\_\_\_\_\_  
Hope Hogan  
Administrative Law Judge



## RESOLUTION OF ANNEXATION

### BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HORACE:

**WHEREAS**, the City of Horace, Cass County, North Dakota, is a municipal corporation, organized and existing under the laws of the State of North Dakota; and

**WHEREAS**, there are contiguous and adjacent to the City of Horace tracts or parcels of land hereinafter specifically described (the "Annexation Property"), containing approximately 67.12 acres, more or less, which tracts or parcels of land are not presently a part of the City of Horace; and

**WHEREAS**, the Annexation Property is surrounded in all directions by land that is within the boundaries of the City of Horace.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Horace, North Dakota, that the boundaries of the City of Horace be, and they hereby are proposed to be, extended so as to include and incorporate within the corporate limits of the City of Horace, Cass County, North Dakota, the following described Annexation Property, to-wit:

All those parts of the Northeast Quarter of the Southwest Quarter of Section 18 and the Southwest Quarter of the Southeast Quarter of Section 18; part of Auditor's Lot 3 of the Southeast Quarter of Section 18; all of Auditor's Lots 8, 9, 10, 11, and 12 of the Southeast Quarter of Section 18; part of the plat of Fradet's Subdivision in the Southeast Quarter of Section 18; all of Lazy A Addition in the Southeast Quarter of Section 18; all of Lazy A Second Addition in the Southeast Quarter of Section 18; and all of the plat of West Brook Subdivision in the Northeast Quarter of Section 19, all in Township 138 North, Range 49 West of the 5th Principal Meridian, Cass County, North Dakota more particularly described as follows:

BEGINNING at the iron monument marking the South Quarter Corner of said Section 18, said monument also marking the northwest corner of the said Plat of West Brook Subdivision; thence westerly, on and along the south line of said Section 18 and also the south line of said Auditor's Lot 3, a distance of 198.00 feet to the southeast corner of the plat of River's Edge Addition; thence Northerly, on and along the east line of said plat of River's Edge Addition, a distance of 263.00 feet to the north line of said Auditor's Lot 3 and the southwest corner of said Lazy A Second Addition; thence northerly, on and along the west line of said Lazy A Second Addition, a distance of 1065.30 feet to the northwest corner of said Lazy A Second Addition; thence easterly, on and along the north line of said Lazy A Second Addition, a distance of 68 feet, more or less, to the centerline of the Sheyenne River; thence northerly and southeasterly, on and along the said centerline of the Sheyenne River, a distance of 399 feet, more or less, to the intersection with the east line of the Northeast Quarter of the Southwest Quarter of said Section 18; thence continuing southeasterly and northeasterly, on and along the centerline of the Sheyenne River and on and along the northerly lines of said Auditor's Lots 9, 12, 10, and 11, a distance of 695 feet, more or less, to the northeast corner of said Auditor's Lot 11; thence southeasterly, on and along the northeasterly line of said Auditor's Lot 11, a distance of 290 feet, more or less, to an angle point on the easterly line of said Auditor's Lot 11; thence southerly, on and along the east line of said Auditor's Lot 11, a distance of 100.00 feet to the southeast corner of said Auditor's Lot 11 and the north line of said plat of Fradet's Subdivision; thence easterly,

on and along the north line of the plat of Fradet's Subdivision, a distance of 464.43 feet to the northeast corner of said plat of Fradet's Subdivision; thence southerly, on and along the east line of said plat of Fradet's Subdivision, a distance of 886.68 feet to an angle point on the easterly line of said plat of Fradet's Subdivision, said angle point also being the northeast corner of the plat of D & K Addition; thence westerly, on and along the north line of said D & K Addition, a distance of 136.31 feet to the northwest corner of said plat of D & K Addition; thence northerly on the northerly extension of the westerly line of said plat of D & K Addition, a distance of 58.00 feet; thence westerly and at a right angle to said northerly extension of the westerly line of said plat of D & K Addition, a distance of 139.08 feet to the westerly line of Lot 26, Block 1 of said plat of Fradet's Subdivision; thence southwesterly along the westerly line of said Lot 26, a distance of 152.54 feet to the southwest corner of said Lot 26; thence southeasterly along the southerly line of said Lot 26, a distance of 218.93 feet to the southeast corner of said Lot 26 and the westerly line of said plat of D & K Addition; thence southerly, on and along the westerly line of said D & K Addition, also being the easterly line of the plat of said Fradet's Subdivision, a distance of 194.24 feet to an angle point; thence southeasterly, on and along the easterly line of said plat of Fradet's Subdivision, a distance of 150.07 feet, more or less to the intersection with the south line of said Southeast Quarter of Section 18; thence easterly, on and along the said south line of the Southeast Quarter of Section 18, a distance of 33 feet, more or less, to its intersection with the centerline of the Sheyenne River, said intersection point also being the northeast corner of said plat of West Brook Subdivision; thence southeasterly and southwesterly, on and along the centerline of said Sheyenne River, a distance of 1906 feet, more or less, to the intersection with the west line of said Northeast Quarter of Section 19, said intersection point also being the southwest corner of said plat of West Brook Subdivision; thence northerly, on and along the west line of said Northeast Quarter of Section 19 and also on and along the west line of said plat of West Brook Addition, a distance of 1155 feet, more or less, to the point of beginning.

The above described tract contains 67.12 acres, more or less, and is subject to easements, reservations, restrictions, and rights of way of record, if any.

**BE IT FURTHER RESOLVED**, by the City Council of the City of Horace, North Dakota, that this Resolution be published in the official newspaper for the City of Horace once each week for two successive weeks, that notice of the Resolution be mailed to the owner of each parcel of real property within the area to be annexed at the person's last-known mailing address, and a hearing be held on November 2, 2020, at 6:00 p.m., at City Hall, 215 Park Drive East, Horace, North Dakota. The owners of any real property within the territory proposed to be annexed within thirty (30) days of the first publication of such resolution may file written protests with the City Auditor protesting against the proposed annexation.

BY: Kory Peterson, Mayor

ATTEST: Brenton Holper, City Auditor

PAGE: 11 of 11 ORDER 1647570  
Ohnstad Twichell, P.C. 10/7/2021 10:24 AM  
Recorded Electronically \$65.00

RECORDER'S OFFICE, CASS COUNTY, ND 10/7/2021 10:24 AM  
I CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD THIS DATE.  
DEBORAH A. MOELLER, COUNTY RECORDER

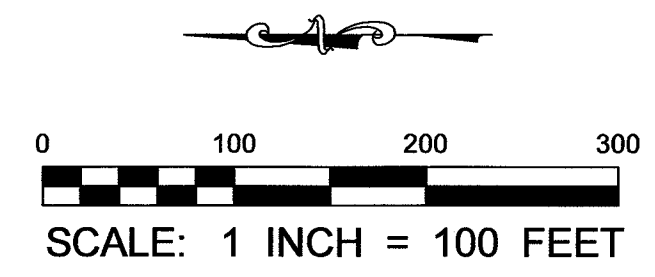
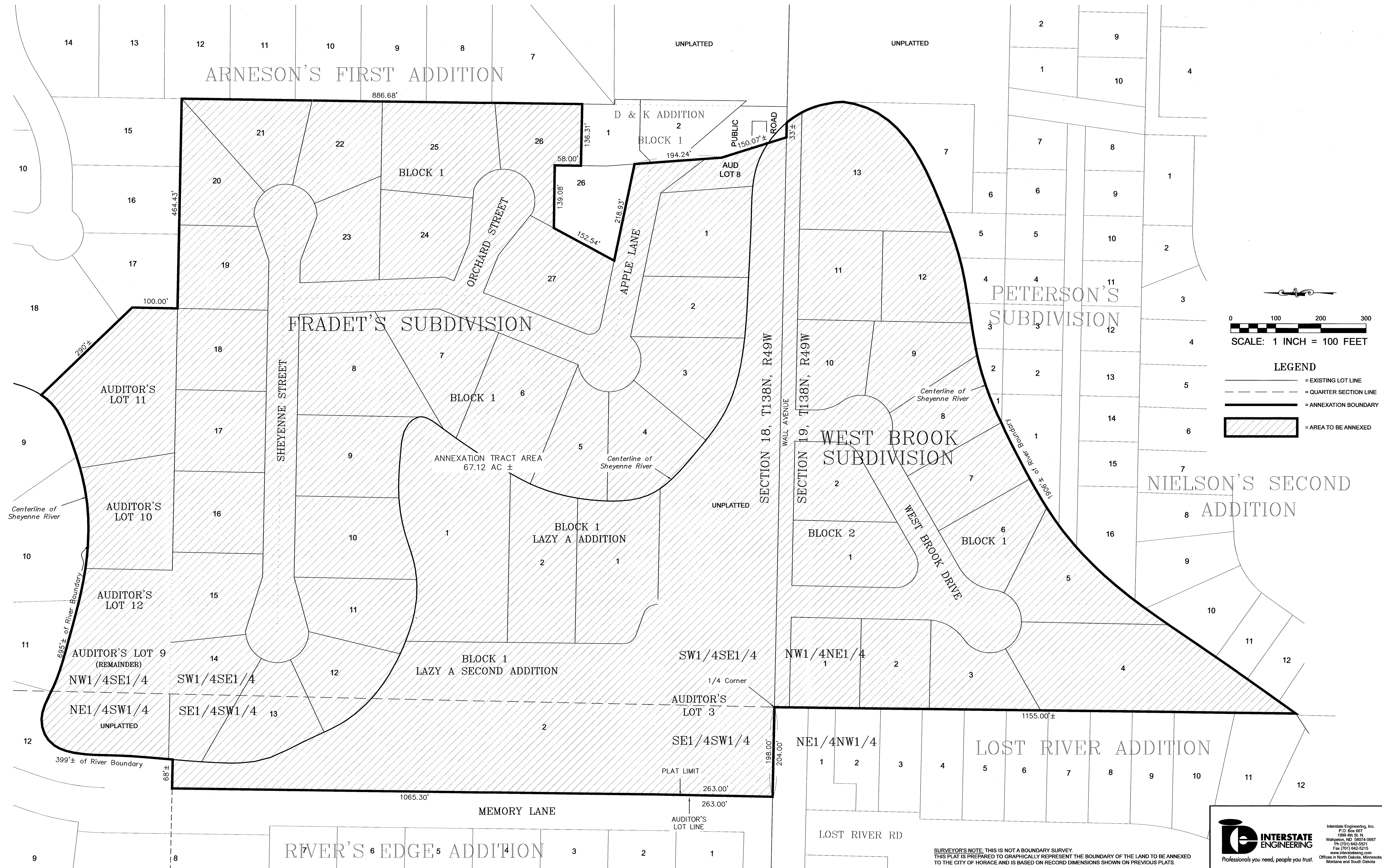
by Teresa A. Kirby, Dep. **1647570**  
Recorded Electronically



# ANNEXATION PLAT

PAGE: 1 of 2 ANEXP 1647571  
Ohnstad Twichell, P.C. 10/7/2021 10:24 AM  
Recorded Electronically \$20.00

ALL THOSE PARTS OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER (NE1/4SW1/4) OF SECTION 18; THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER (SW1/4SW1/4) OF SECTION 18; PART OF AUDITOR'S LOT 3 OF SECTION 18; ALL OF AUDITOR'S LOTS 8, 9, 10, 11, & 12 OF THE SOUTHWEST QUARTER OF SECTION 18; PART OF THE PLAT OF FRADET'S SUBDIVISION; ALL OF LAZY A ADDITION; ALL OF LAZY A SECOND ADDITION; AND ALL OF THE PLAT OF WEST BROOK SUBDIVISION, ALL IN TOWNSHIP 138 NORTH, RANGE 49 WEST OF THE 5TH PRINCIPAL MERIDIAN, CASS COUNTY, NORTH DAKOTA



**LEGEND**

- = EXISTING LOT LINE
- = QUARTER SECTION LINE
- = ANNEXATION BOUNDARY
- = AREA TO BE ANNEXED

**SURVEYOR'S NOTE:** THIS IS NOT A BOUNDARY SURVEY. THIS PLAT IS PREPARED TO GRAPHICALLY REPRESENT THE BOUNDARY OF THE LAND TO BE ANNEXED TO THE CITY OF HORACE AND IS BASED ON RECORD DIMENSIONS SHOWN ON PREVIOUS PLATS.

**INTERSTATE ENGINEERING**  
 Professionals you need, people you trust.  
 Interstate Engineering, Inc.  
 P.O. Box 667  
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# ANNEXATION PLAT

ALL THOSE PARTS OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER (NE1/4SW1/4) OF SECTION 18; THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER (SW1/4SE1/4) OF SECTION 18; PART OF AUDITOR'S LOT 3 OF SECTION 18; ALL OF AUDITOR'S LOTS 8, 9, 10, 11, & 12 OF THE SOUTHEAST QUARTER OF SECTION 18; PART OF THE PLAT OF FRADET'S SUBDIVISION; ALL OF LAZY A ADDITION; ALL OF LAZY A SECOND ADDITION; AND ALL OF THE PLAT OF WEST BROOK SUBDIVISION, ALL IN TOWNSHIP 138 NORTH, RANGE 49 WEST OF THE 5TH PRINCIPAL MERIDIAN, CASS COUNTY, NORTH DAKOTA

CERTIFICATE

Michael L. Fletchall, being first duly sworn, deposes and says that he is the Registered Professional Land Surveyor who prepared and made the attached plat of a parcel of land annexed to the City of Horace on the 15<sup>th</sup> day of OCTOBER, 2021; that the property represented in this plat is a part of the Northeast Quarter of the Southwest Quarter (NE1/4SW1/4) of Section 18; a part of the Southwest Quarter of the Southeast Quarter (SW1/4SE1/4) of Section 18; a part of Auditor's Lot 3 of the Southeast Quarter of Section 18; all of Auditor's Lots 8, 9, 10, 11, and 12 of the Southeast Quarter of Section 18; a part of the plat of Fradet's Subdivision in the Southeast Quarter of Section 18; all of Lazy A Addition in the Southeast Quarter of Section 18; all of Lazy A Second Addition in the Southeast Quarter of Section 18; and all of the plat of West Brook Subdivision in Section 19, all in Township 138 North, Range 49 West of the 5th Principal Meridian, Cass County, North Dakota; and that said attached plat is a correct representation of said parcels of land annexed to the City of Horace and described as follows, to wit:

ANNEXATION TRACT DESCRIPTION

All those parts of the Northeast Quarter of the Southwest Quarter (NE1/4SW1/4) of Section 18; the Southwest Quarter of the Southeast Quarter (SW1/4SE1/4) of Section 18; part of Auditor's Lot 3 of Section 18; all of Auditor's Lots 8, 9, 10, 11, and 12 of the Southeast Quarter of Section 18; part of the plat of Fradet's Subdivision in Section 18; all of Lazy A Addition in Section 18; all of Lazy A Second Addition in Section 18; and all of the plat of West Brook Subdivision in Section 19, all in Township 138 North, Range 49 West of the 5th Principal Meridian, Cass County, North Dakota described as follows:

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The above described tract contains 67.12 acres, more or less, and is subject to easements, reservations, restrictions, and rights of way of record, if any.

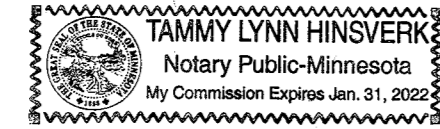
  
Michael L. Fletchall  
Professional Land Surveyor  
North Dakota Registration No. LS-4293



State of North Dakota )  
County of Richland ) SS


On this 15<sup>th</sup> day of October, 2021, before me, a notary public in and for said County and State, personally appeared Michael L. Fletchall, Registered Land Surveyor, known to me to be the person described in and who executed the foregoing instrument and acknowledged to me that he executed the same as a free act and deed.

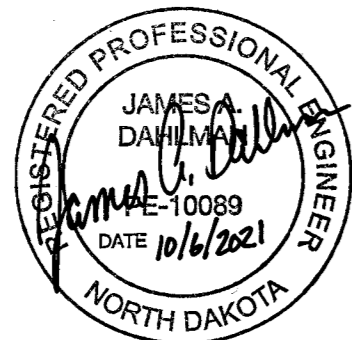
  
Notary Public, Richland County, North Dakota  
Otter Tail, Minnesota



CITY ENGINEER'S APPROVAL

This plat in the City of Horace is hereby approved this 6<sup>th</sup> day of OCTOBER, 2021.

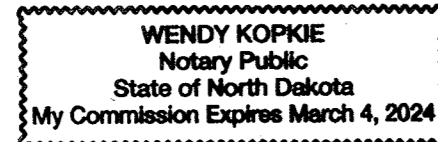
  
James Dahlman, City Engineer



State of North Dakota )  
County of Cass ) SS

On this 6<sup>th</sup> day of October, 2021, before me, a notary public in and for said County and State, personally appeared James Dahlman, known to me to be the person described in and who executed the foregoing instrument and acknowledged to me that he executed the same as City Engineer.


  
Notary Public, Cass County, North Dakota



CERTIFICATE BY EXECUTIVE OFFICE OF CITY

I, Kory Peterson, do hereby certify that I am now, and at all times during the annexation of the property described have been Mayor of the City of Horace, County of Cass, State of North Dakota, and I further certify that on the 6<sup>th</sup> day of October, 2021, the City Council of the City of Horace, County of Cass, State of North Dakota, did annex the property described in the certificate shown on the Annexation Plat by Michael L. Fletchall, Registered Land Surveyor; that the description, distances, and limits shown on said plat are correct; and that said plat shows the corporate limits of the city contiguous to the annexed property and the change made therein by said Annexation.

This plat in the City of Horace is hereby approved this 6<sup>th</sup> day of October, 2021.

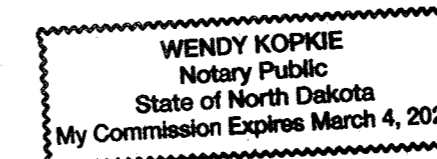
  
Kory Peterson, Mayor, City of Horace

  
Brenton Holper, Auditor, City of Horace

State of North Dakota )  
County of Cass ) SS

On this 6<sup>th</sup> day of October, 2021, before me, a notary public in and for said County and State, personally appeared Kory Peterson, Mayor, City of Horace, known to me to be the person described in and who executed the foregoing instrument and acknowledged to me that he executed the same as Mayor of the City of Horace.

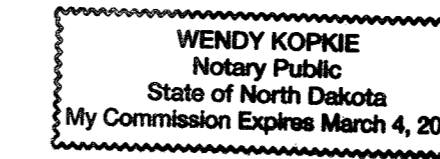
  
Notary Public, Cass County, North Dakota



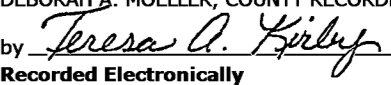
State of North Dakota )  
County of Cass ) SS

On this 6<sup>th</sup> day of October, 2021, before me, a notary public in and for said County and State, personally appeared Brenton Holper, Auditor, City of Horace, known to me to be the person described in and who executed the foregoing instrument and acknowledged to me that he executed the same as Auditor of the City of Horace.

  
Notary Public, Cass County, North Dakota



PAGE: 2 of 2 ANEXP 1647571  
Ohstad Twichell, P.C. 10/7/2021 10:24 AM  
Recorded Electronically \$20.00

RECORDERS OFFICE, CASS COUNTY, ND 10/7/2021 10:24 AM  
I CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD THIS DATE.  
DEBORAH A. MOELLER, COUNTY RECORDER  
by  Dep. 1647571  
Recorded Electronically

