Annexation Criteria

MINNESOTA PLANNING is charged with developing a long-range plan for the state, stimulating public participation in Minnesota's future and coordinating public policy with state agencies, the Legislature and other units of government.

This report was prepared by the strategic planning team at Minnesota Planning. Steve Reckers was the chief author. Additional assistance was provided by Jay Fonkert, Wendy Abrahamson, Linda West, Linda Oelker and Renee Anderson.

Acknowledgments

We thank the following for their review and comments: Association of Minnesota Townships, Association of Minnesota Counties, League of Cities, Coalition of Greater Minnesota Cities, John Shardlow, Dahlgren Shardlow and Uban, Gunnar Isberg, Metropolitan Council and Tom Salkowski, Wright County planning and zoning administrator.

April 1995

Upon request, *Annexation Criteria: Report to the Legislature,* will be made available in alternate format, such as Braille, large print or audio tape. For TDD, contact Minnesota Relay Service at (612) 297-5353 or (800) 627-3529 and ask for Minnesota Planning.

For additional information or copies of *Annexation Criteria,* contact:

658 Cedar St.
St. Paul, MN 55155
(612) 296-3985

The cost to prepare and publish this report was about $10,500.

Printed on recycled paper with at least 10 percent post-consumer waste.

Summary

This report was prepared to respond to a 1994 legislative request to establish criteria to define the terms "urban or suburban in character" and "rural residential." These terms are found in the annexation law, Minnesota Statute Chapter 414.

Annexation continues to be a problem for Minnesota communities. Some believe that statutory provisions make annexation too difficult and provide too little direction for decisions of the Minnesota Municipal Board. Others believe that the board's structure favors rural interests, creating additional barriers for cities. Lack of cooperation and inadequate land use planning and regulation in some areas complicates the annexation process.

This report provides background information on the Minnesota annexation law as well as laws in neighboring and other states. It examines some of the more apparent intergovernmental issues affecting annexation, such as overlapping authorities, scattered fringe-area development, service provision, cooperative planning activities and property taxes. It suggests criteria to define the terms "urban" and "rural residential" for consideration by the Legislature and local officials. Finally, the report suggests, as a way to avoid some of the more contentious annexations and to improve future annexation efforts, a joint planning approach that includes revenue sharing as an incentive for participation.

Defining "urban" and "rural residential" will be useful because clear definitions will provide more direction for Municipal Board decisions and greater predictability among local officials. By themselves, however, definitions are unlikely to solve future annexation problems. Along with them are needed better planning and land regulatory activities.

Introduction

The 1994 Legislature passed legislation requesting Minnesota Planning to define two terms that appear in the law dealing with incorporation, detachment and annexation. The terms are "urban or suburban in character" and "rural residential."

Defining the term "urban or suburban in character" is important because in annexations involving the Minnesota Municipal Board, the board must consider whether an area proposed for annexation is now or about to become urban or suburban in character. Because the statute provides no definition of these terms, some board decisions have been viewed as arbitrary, resulting in confusion and frustration among participating local units of government.

Clearly defined terms can help guide Municipal Board decisions and provide greater predictability to participants in the annexation process. Such definitions also should help state and local government create opportunities for wiser land management and more efficient service delivery.

Minnesota Annexation Law

Minnesota law has not always contained references to what "is now, or is about to become urban or suburban in character." Until this language was used, the law specified that before annexation could occur, the land had to be "so conditioned as to be properly subjected to municipal government." The properly conditioned test was argued in a number of early annexation cases. In these cases, the courts determined that "properly conditioned" meant:

- The platted portion must contain a compact center or nucleus of population.

- The adjoining unplatted portion must be suburban in character.

- The unplatted lands must have a unity of interest with the platted lands in the maintenance of the city.

In the first point, "compact center" could refer to a concentration of housing units just as easily as a concentration of commercial or industrial development.

On the second point, the courts typically have distinguished between rural areas where residents' livelihood is gained from predominantly agricultural endeavors and those where agriculture is secondary to urban occupations as a source of income. The courts seem to relate urban occupations with suburban development.

The third point focuses on the unity of interest concept. Under this concept, the courts have looked at factors that link the area for annexation with the city. Do area roads provide direct access to the city? Have new roads or dwellings been built recently? Is the area largely uninhabited? Are residents of the area involved in civic groups or organizations established by the city?

Not all agricultural land is considered inappropriate for annexation. Past court decisions have discussed the suitability of dividing agricultural land into smaller parcels to accommodate new development pushing out from a city. In cases where such growth is increasing, the courts generally have supported annexation, viewing the land as suburban or urban in character or about to become so.

Municipal Board

The Minnesota Municipal Board was created by the Legislature in 1959 to handle matters regarding the creation of cities, consolidation of governmental units and modifications of municipal boundaries. Minnesota was the first state to establish a separate board to hear and decide issues involving incorporation and boundary adjustments. Eleven other states — Alaska, California, Iowa, Michigan, Missouri, Nevada, New Mexico, Oregon, Utah, Virginia and Washington — now have boundary review commissions. Only five have statewide boundary commissions: Alaska, Iowa, Michigan, New Mexico and Virginia.

The Municipal Board is composed of three permanent and two temporary members. Permanent members are appointed by the Governor for six-year terms. One must live outside the Twin Cities metropolitan area. The two temporary members are members of the board of the county in which the incorporation, consolidation or annexation will take place; they are appointed by the count board and serve only for boundary adjustments in their county.

Boundary Adjustments

Minnesota law deals with five types of boundary adjustments: annexation, detachment, incorporation, and consolidation and dissolution. While this report deals primarily with boundary adjustments involving annexation, it has implications for other boundary adjustments. Minnesota law provides for three types of annexation: annexation by ordinance, annexation by order of the Municipal Board and orderly annexation.

The number of annexations, particularly those by ordinance, has increased in recent years. The number of acres annexed has also grown, reaching a 10-year high of more than 14,000 in fiscal year 1994. Between 1985 and 1994, a total of 65,752 acres were added to cities through annexation. New development on the fringe of cities, requiring such city services as sewer, water and paved roads, is partly responsible for this growth. Some cities also are completely developed and eventually will need more space for growth.

Annexation by Ordinance

Under Minnesota Statute 414.033, cities may annex land simply by passing an ordinance declaring that specific parcels of land are now part of the city, so long as certain conditions are met. The ordinance process may be initiated either by the city or by petition of property owners. This is the most common form of annexation. In fiscal year 1994, 220 annexations by ordinance occurred involving more than 7,500 acres.

A city may annex land by ordinance if it has given 30 days' notice of a public hearing on the annexation to all towns and all landowners within and contiguous to the area to be annexed and any of the following conditions are met:

- The land is owned by the municipality (in which case, the action does not require a public hearing).

- The land is completely surrounded by land within the municipal limits.

- The land abuts the municipality and the area to be annexed is 60 acres or less; the area to be annexed is not served by public sewer facilities or public sewer facilities are not otherwise available; and the municipality receives a petition for annexation from all the owners of the land.

- A preliminary or final plat for subdivision of the land to provide residential lots averaging 21,780 square feet or less was approved after August 1, 1995, and the land is located within two miles of the municipal limits.

■ The land is owned by the city or all of the landowners petition for annexation, and the land is within an existing orderly annexation area.

The land is deemed to be urban or suburban in character if any of these conditions is met.

Other conditions under which land may be annexed by ordinance include:

■ Sixty percent of the perimeter of the area to be annexed by a city borders on the city; the area to be annexed is 40 acres or less, and the city has served notice to annex on the town board and the Municipal Board; and the town board does not file an objection within 90 days. If the town board objects to the annexation within 90 days, the Municipal Board must conduct a public hearing before issuing its order.

Frequency and Size of Annexations Grow from 1985 to 1994

Year		Annexation by Ordinance	Annexation by Board Order or Orderly Annexation	Total
1985	Annexations	96	25	121
	Acres	1,484	1,413	2,897
1986	Annexations	95	27	122
	Acres	1,720	1,824	3,544
1987	Annexations	71	32	103
	Acres	1,007	1,388	2,395
1988	Annexations	81	47	128
	Acres	1,910	3,577	5,487
1989	Annexations	110	47	157
	Acres	3,253	2,164	5,417
1990	Annexations	106	55	161
	Acres	4,907	3,893	8,800
1991	Annexations	100	59	159
	Acres	2,717	3,378	6,095
1992	Annexations	88	57	145
	Acres	5,800	2,908	8,708
1993	Annexations	154	80	234
	Acres	5,042	3,356	8,398
1994	Annexations	220	66	286
	Acres	7,677	6,334	14,011
Total	Annexations	1,121	495	1,616
	Acres	35,517	30,235	65,752

Source: Minnesota Municipal Board

■ The land is platted, or does not exceed 200 acres if unplatted, and a majority of property owners petition the city council to annex land that abuts the city. These property owners must file copies of the petition with the Municipal Board, the town board, the county board and the city council of any city that borders the land to be annexed. Any objections from the town board or the city council must be filed with the Municipal Board within 90 days, triggering a public hearing and making any action by the city council subject to approval by the board.

Orderly Annexation

Orderly annexation lets the city and township address annexation more cooperatively and give more thought to the needs of the broader area. It encourages joint planning for the area where annexations are expected and helps in timing annexations to coincide with new development and the need for city services. The process is intended to avoid piecemeal annexations while giving local governments more time to prepare for future annexations and to direct growth in a more orderly fashion.

Orderly annexation can occur by resolution, petition or Municipal Board designation. Under the resolution method, a joint resolution of the city council and the affected town board that identifies the unincorporated area where annexations are expected either now or at some later date is submitted to the board. The Municipal Board's role varies depending on language in the resolution:

■ If the resolution confers jurisdiction on the Municipal Board over annexations in the designated area and is submitted to the board's executive director, future annexations may be initiated by the board on its own motion or by submission of a resolution of any of the parties to the joint resolution. The board holds a public hearing before making its decision on the annexation.

■ If the resolution states that no alteration of the boundaries of the designated area is necessary, the board may review and comment on the annexation but may not alter the boundaries.

■ A resolution stating conditions for the annexation but specifying that board consideration is not necessary essentially requires the board to approve the annexation after review and comment within 30 days but avoids a public hearing before the board.

The petition process is initiated by either all of the property owners in an area or the city if it owns the property and the area is within two miles of the city. The petition gives the Municipal Board authority to designate an area for orderly annexation after holding a public hearing, if one is requested by affected parties.

The Municipal Board may designate an area for orderly annexation if the Pollution Control Agency or other state agency authorized by law to do so orders a municipality to extend municipal services to a designated unincorporated area.

Annexation by Board Order

Annexations by board order typically occur when no orderly annexation agreements are in place, annexations by city ordinance are not possible or annexations by ordinance are contested. Such annexations must involve property that abuts the annexing city and are initiated by submitting to the executive director of the Municipal Board and to the affected township one of the following:

- A resolution of the annexing municipality
- A resolution of the township containing the area proposed for annexation
- A petition of 100 or 20 percent of the property owners, whichever is less, in the area to be annexed, accompanied by a resolution of the annexing city supporting the petition
- A resolution of the city council together with a resolution of the township board stating their desire to have the entire township annexed to the municipality

Definitions of "Urban" and "Rural Residential"

Other States

Some other states' annexation statutes were reviewed to identify their definitions of terms. Some states were selected because they are neighbors, some because they are considered to have innovative annexation statutes and others were chosen at random (see appendix).

In her study of municipal annexation powers, law professor Laurie Reynolds found that in city-initiated annexation proceedings, urban development usually had to meet certain standards or criteria. Such standards might include the number of people per acre, the amount of land subdivided into lots or the current use of the land. These criteria were seldom required in annexations initiated by a petition of property owners. Most states incorporate uses typically associated with suburban development in the definition of "urban," for example, low-density residential development outside the corporate limits, but rarely mention the term "suburban." "Rural residential" is seldom used, according to Reynolds' study.

In most states reviewed for this report, "urban" is referred to either as land for "urban purposes" or as an "urbanized area." It is defined in several different ways. Some states, such as Florida, Indiana, Nevada, North Dakota and North Carolina, have established in statute objective, quantifiable urban criteria as a prerequisite to annexation. In these states, land must meet one of three criteria to be urban: 1) it must have a density of a certain number of people per acre; 2) a specified percentage of the area is platted; or 3) the land is zoned for residential, commercial or industrial use.

Other states have statutory provisions restricting annexations to areas of extraterritorial jurisdiction but do not necessarily define "urban." In Texas, the extraterritorial jurisdiction varies with size of city. In Illinois, extraterritorial jurisdiction extends one and one-half miles from the city boundary and may extend into another city's area if the annexation would otherwise meet requirements for annexation. In

California, a local boundary commission must determine a "sphere of influence" within which annexations can take place. In determining the sphere of influence, the commission must address the following criteria: 1) present and planned land uses; 2) either current or future need for public services; 3) communities of interest in the area; and 4) current adequacy of public services.

None of the states reviewed for this report uses or defines in statute the terms "suburban" or "rural residential."

Reynolds believes that cities should be permitted more flexibility in their ability to annex urban areas but at the same time should adhere to objective criteria and procedural safeguards not present in most state annexation laws. She suggests that state law should require that land to be annexed be contiguous with the annexing city boundary, limited to a single tract of land and meet specific urban-usage standards. She offers only one relatively simple criteria for the urban-usage standard: "the territory be currently devoted to, or platted to be developed for, urban purposes." She contends that such a simplified standard, when combined with contiguity limits and ownership requirements, is all that is necessary to ensure that only developed urban land is annexed.

Other Definitions

Definitions of urban and rural can be found elsewhere. The Census Bureau defines "urban" and "rural" for purposes of compiling demographic information. "Urban" is defined as:

> 1) Places of 2,500 or more persons incorporated as cities, villages, boroughs...but excluding the rural portions of "extended cities."
>
> 2) Census designated places (unincorporated area) of 2,500 or more persons.
>
> 3) Other territory, incorporated or unincorporated, included in urbanized areas.

"Rural" is classified as everything else and is divided into "rural farm," constituting rural households and housing units on farms that sold more than $1,000 in agricultural products in 1989, and "rural non-farm."

The Census Bureau also defines "urban fringe" as the adjacent settled area of a city that together with the city has a population greater than 50,000 and a density of 1,000 people per square mile. Outlying areas one and one-half miles from the core of the contiguous settled area connected by a road also qualify as "urban fringe" if the density is at least 1,000 people per square mile, or roughly 1.6 people per acre.

The Metropolitan Council also has defined urban and rural areas. Its recent *Regional Blueprint* lists policies and strategies to be used by local governments in determining future patterns of growth in the region. It generally discourages growth and development in rural areas while promoting staged and managed growth in areas suited for development and urban services.

In general, the rural use area consists of agriculture, parks and low-density residential development of no more than one housing unit per 10 acres with a maximum of 64 per 640 acres in the general use area and only one per 40 acres in the rural agricultural area. More important, the rural area residents should not expect typical urban services, such as high-volume roadways, sewer and water services, and urban-level police and fire protection.

The urban service area identified in the *Regional Blueprint,* is characterized by a high level of urban services with transportation corridors and transit providing good access to jobs. Such services as sewer, water, police, fire, parks and libraries are readily available to all residents. Urban service areas include a wide range of housing densities, commercial and industrial areas, and public open space, as well as vacant land to accommodate public service extension for new growth.

Annexation Issues and Problems

Annexations or boundary changes have been occurring in Minnesota as long as it has had cities, particularly growing ones. Some annexations are initiated after a problem has occurred, such as a failing septic system or a polluted water well. Others are necessary because of poor coordination and ineffective land use practices that result in additional land development problems, such as deficient roads or inadequate park land. While

good definitions are necessary to guide annexation decisions, they are not nearly as important as the need for cooperative planning and land regulation.

Outside the Twin Cities area, cities grouped in the following population categories had the most population growth between 1980 and 1990: 5,000 to 9,999, 10,000 to 24,999 and 25,000 to 49,999, with those in the later group growing the most (9.3 percent). Only 44 cities fall into these three groups, however. The 671 cities with less than 2,500 people lost total population during the decade. The 44 cities with 5,000 or more people account for most of the annexations both in number and total acreage.

Some local officials argue that annexation efforts frequently come too late and are a reaction rather than a solution to fringe-area problems. Townships believe that cities often attempt to annex land to increase their size and tax base at the expense of townships. Cities, on the other hand, believe township planning and land development practices do not adequately anticipate the time when the area will need city services and be included in the city.

Land use problems in and around cities have been well documented, including in two growth management studies conducted by Minnesota Planning, the first in 1981 and the second in 1994; a Department of Agriculture's study, *Development in Wright County;* several surveys conducted by the Minnesota Pollution Control Agency; and other studies by consultants and local units of government. Such studies have found that:

■ **Fringe-area development problems are not new, have frequently resulted in poor use of land and are not confined to major metropolitan areas.**

■ **Many townships want to protect the rural-agricultural lifestyle, but because they lack staff and expertise, they often develop ordinances that fall short of achieving such goals.**

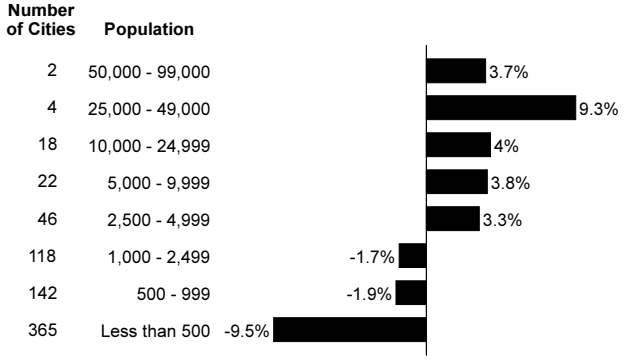
■ **Townships that border on growing cities feel pressure from developers and land speculators to convert land to more urban-type uses.** Such land is usually cheaper than land within the city because it lacks basic city services, such as sewer, water and paved roads. Consequently, while development in fringe areas may initially provide more affordable housing opportunities, it often results in scattered large-lot development that in the future may be costly to provide with city services.

■ **Strict land use controls are difficult to establish in fringe areas where growth pressures are strongest.** Property owners near growing cities see selling their land for development as more profitable than for agricultural use. Local officials, therefore, may be reluctant to adopt strong land use controls that might curb owner profits. The increased tax base such development promises may also be difficult to turn down.

■ **Overlapping authorities complicate planning and regulating land use in fringe areas.** Cities may extend subdivision and zoning controls up to two miles from their corporate limits under certain conditions. Since the fringe area is within the boundaries of the county and the township, each jurisdiction can develop plans and adopt controls for it. Where both the county and township have plans and controls, however, the township plan and controls must be at least as restrictive as the county's.

■ **Poorly planned and unmanaged growth may result in environmental harm or costly provision of municipal services.** Some development has been permitted on land with poor soils or high water tables. Polluted water wells and ground water contamination have occurred in some areas. Providing sewer, water, roads and other city services costs more in areas where lot sizes are large or not contiguous with existing development. Current estimates are around $150 per front foot for sewer, water, streets and storm sewers. Increasing lot width by 50 feet would result in an increase of $7,500 per lot. Providing a one-acre lot approximately 200 feet by 200 feet with municipal services can cost as much as $30,000. In some areas, assessments for services may

Population Change in Cities Outside the Twin Cities
1980 - 1990



Note: Includes all cities outside the Twin Cities seven-county area.
Source: U.S. Census 1980, 1990

not be fully chargeable to the benefiting property. Minnesota law limits assessments to no more than the increase in market value of the property as a result of the new services. In such cases, costs not recovered through special assessment would be borne by the entire city.

Some cities also assert that people who live outside their limits use such facilities as parks, libraries and roads at no cost. Township officials believe, however, that since many of these facilities are also funded in part with federal dollars, rural residents should be able to use them. Rural residents also support city businesses through buying their goods and services.

It should be pointed out that township development is not the only development with potential for surface and groundwater pollution. A 1992 survey by the Pollution Control Agency identified 195 small cities that lacked community wastewater treatment facilities.

■ **Annexations lead to lost tax base and property tax revenues for townships.** After annexation, revenues needed to pay for township services are spread among fewer residents, sometimes increasing property taxes. Amendments to Minnesota's annexation law in 1994 partially solved this problem by requiring the city to pay the township for property taxes lost on a decreasing basis over a five- year period.

■ **Lack of cooperation and coordination in planning for development in the fringe area can result in land use and annexation problems.** All three levels of government have some authority for planning and regulating land use in the fringe area. Though state law provides for the creation of a planning board to encourage joint planning in the fringe area, few jurisdictions have taken advantage of this mechanism. Consequently, joint planning efforts have been few, and problems continue to mount.

■ **Rural electrical cooperatives are losing service area to annexations.** A growing concern in rural areas is that electrical cooperatives are losing their service area and customer base. When unincorporated areas are annexed, utility service once provided by the rural electrical cooperative is taken over by the utility in the annexing city. The urban utility usually can provide lower rates, while rates may increase for rural residents still served by the rural electrical cooperative. For example, Alexandria municipal service rates were 35 percent lower than rates of the area's rural electrical cooperative.

A few specific examples illustrate some of the more serious problems with and potential costs of annexation to local governments and property owners:

■ **Winona and Winona Township.** Some homes in a subdivision of 56 relatively small lots in Winona Township are having problems with their on-site septic systems and drain fields. The malfunctioning systems are a threat to health and could pollute individual water wells. Poor soils and small lots make on-site correction nearly impossible.

The township proposed connecting to the city wastewater treatment facility, but the city refused, citing its policy of not providing such services to unincorporated land. Opposed to annexation, the township then proposed building its own treatment system with a $750,000 loan from the Pollution Control Agency. The PCA denied the loan because of the township's proximity to the city treatment facility and concerns about discharges into a nearby lake from the township facility. Costs for sewer alone were expected to run from $13,000 to $15,000 per house. Other urban services, such as water, streets, and curbs and gutters, would mean additional costs. This situation presents a serious problem for the area's local officials and property owners who thought they were getting inexpensive housing in a rural setting.

■ **Monticello and Monticello Township.** The city and the township formed an orderly annexation agreement in 1972 as a result of some earlier contested annexations. The agreement established a board made up of city, township and county officials that would exercise planning and land use control and monitor annexation requests.

Some initial efforts by the board were not successful, and several annexation requests by the city angered township officials. One involved a 1978 request by the city to annex approximately 600 acres. The city had annexed 3,000 acres in 1974, much of which was still undeveloped in 1978. The township saw no reason for the 1978 annexation request since much of the 3,000 acres annexed in 1974 had not been developed. Another involved a 1987 request for annexation of 6,000 acres. The Municipal Board refused that request but allowed the city to annex 440 acres. This upset township officials because development did not occur on the annexed land for more than five years.

An urbanization plan intended to provide for planned orderly growth and better timing of annexations was developed later. While not working perfectly, area

officials believe it has prompted positive discussion on some of the more contentious issues and resulted in more opportunities for compromise and better cooperation.

■ **Alexandria and Alexandria Township.** A subdivision called Summerville Estates located just north of Alexandria has been the subject of recent annexation efforts between the city and Alexandria Township. The subdivision contains 66 lots, each about 30,000 square feet; three outlots (nonresidential lots) averaging 11 acres; and a several businesses. The subdivision is separated from the city by another small subdivision.

The developer of Summerville Estates was interested in securing city water service for all lots in the subdivision. At $1,500 per lot, this was cheaper than the $2,500 to $4,000 needed for individual deep wells. Moreover, a central water main serving the high school north of Summerville Estates runs through the property. All lots are served by a central sewer system provided by the sewer district created through special legislation in the early 1970s.

For the city to annex Summerville Estates, it first needed to annex the small Caldwell subdivision separating the city and Summerville Estates. Residents of the Caldwell subdivision were opposed to the annexation because they feared higher taxes and additional costs for water service, which they already had available through individual wells. Consequently, annexation failed.

■ **Athens Township and Isanti County**. A developer recently appeared before the Athens town board seeking preliminary approval of a rural housing subdivision design. The proposed subdivision contains 460 acres and would accommodate about 80 five-acre lots. Athens Township is south of the city of Isanti and its southern border abuts Anoka County. Township residents and board members are concerned about taxes rising to provide services to the new development and the impact new residents might have on farming operations because they do not like the smell, noise or dust created by farming. Some also feel that 80 private sewage systems could pollute area wetlands and groundwater resources. Most believe that urban-type development should be located closer to the city of Isanti, where it can eventually be included and more easily access city services. Township officials have requested that Isanti County declare a moratorium on future developments like these until further study is conducted and better plans are in place to address mounting development pressures.

These examples are not isolated events. More like them can be found in other growing areas of the state. Many of the problems discussed above can be traced to inconsistencies in the definition of "urban" and "rural residential" in various local plans and ordinances.

Establishing Criteria for Definitions

Establishing criteria for defining the terms "urban," "suburban, or about to become so" and "rural residential" raises the question whether the same criteria are suitable in all cases. As noted, not all states reviewed use or define these terms in their statutes. Other uses of these terms, such as by the Census Bureau or planners, may give a broader or narrower meaning than might be desirable for annexation purposes.

In the Minnesota law on incorporation, detachment and annexation, the Legislature has made several findings that probably should guide any definition that is developed:

■ "Sound urban development and preservation of agricultural land and open spaces through land use planning is essential to the continued economic growth of this state; and

■ Municipal government most efficiently provides governmental services in areas intensively developed for residential, commercial, industrial and governmental purposes, and township government most efficiently provides governmental services in areas used or developed for agricultural, open space and rural residential purposes."

Urban

Most commercial, industrial and relatively high-density residential development (that is, lots of one acre or less) usually is considered urban. Parks, open space and natural areas that serve a predominantly urban population might also be considered urban even though they lack development. On the other hand, land devoted to agricultural use may not be urban even when it is within the corporate limits of a city. A city boundary does not necessarily divide urban from nonurban areas. Development that is outside the

corporate limits but directly linked with the city because its enterprises employ city residents or its residents work in the city might also be considered urban.

"Urban" also might refer to areas that are vacant but zoned for urban uses, such as residential, commercial or industrial activities, even though such areas are located outside the corporate limits. Zoning is likely indicative of future use and development. Platted but vacant residential subdivisions at densities comparable to other fringe development also might be urban.

Suburban

For all practical purposes, suburban areas should be considered urban. "Suburban" has traditionally meant the rapidly developing areas outside of major core cities. Many suburban areas began in rural areas close to or contiguous with the core city and were essentially residential in character. They provided housing for a rapidly growing number of people, most of whom worked in the city. While suburban residential lots are typically larger than city lots, they require about the same level of public services.

As suburbs incorporated and developed their own commercial and employment sectors, they essentially thwarted further attempts by the central city to expand. Today in many large metropolitan areas, most job growth occurs in suburban areas.

Residential development on the fringe of growing regional centers in Minnesota might also be classified as suburban development but at a different level. Cheaper land prices or lack of space within the city has promoted residential subdivisions or scattered residential development near many growing Minnesota cities. Some strip commercial development also has occurred outside some city boundaries along major transportation corridors.

Rural Residential Development

Rural residential development can best be described as being neither suburban nor urban. Frequently, it is the scattered residences that can be found in various unincorporated areas of the county. In other cases, it may be relatively small subdivisions whose residents may work in the city but who otherwise depend little on city services. These small subdivisions seldom are contiguous with the city. Areas containing scattered-site housing or small large-lot subdivisions usually are zoned for uses other than residential, typically some form of agriculture.

Suggested Criteria

The following criteria for determining whether land is urban or rural residential are suggested for consideration. The urban category includes suburban criteria. Defining these terms is difficult because situations and perceptions vary. What a city may see as rural, to a farmer may be urban. These criteria should not be considered the final word in what is "urban" or "rural residential" but rather should be seen as a starting point for further debate and discussion.

Representatives of affected local jurisdictions have agreed to refrain from seeking legislation on criteria and other annexation matters in 1995 and to continue discussion on the issues. These criteria are offered to inform and stimulate those discussions.

Suggested criteria for "urban or about to become urban" are:

- Areas zoned for residential, commercial or industrial use that are within one mile of cities of less than 5,000 population and within two miles of cities of more than 5,000 population.

- Existing residential, commercial or industrial land uses that are contiguous with the city that either need or will need city services, such as sewer, water, roads, and police and fire protection.

- Existing individual residential parcels of two and one-half acres or less and subdivisions that are within one mile of cities of less than 5,000 population and within two miles of cities of more than 5,000 population.

- Land identified in a comprehensive plan deemed necessary to accommodate future city growth based on reasonable projections of population and economic conditions that are well-documented in the comprehensive plan, provided such plan has the support of the county and adjacent townships. Where a common plan is in place, the urban boundaries identified in the

plan will supersede the one- and two-mile boundaries established in other criteria for cities with less than 5,000 population and those with more than 5,000 population.

■ Cluster residential developments having lot sizes comparable to those existing within the corporate limits and that are within one mile of cities of less than 5,000 population and two miles of cities of more than 5,000 population.

Suggested criteria for "rural residential" are:

■ Areas zoned for agricultural use that permit scattered nonfarm residential development or rural subdivisions as a conditional use provided that: such uses are beyond the one- and two-mile limit based on city size; scattered nonfarm development is at a density of one unit per 40 acres or less; and subdivisions are five parcels or less and not located on prime agricultural land (a minimum of class 1, 2 and 3 soils), as defined in the local ordinance.

■ Residences that are in addition to the original farmstead. They may provide housing for retirees or relatives of the principal farming operator or others engaged in farming activities.

■ Existing residential parcels of two and one-half acres or larger for which typical city services, such as paved roads, city police protection and sewer and water services, are not expected.

■ Residential parcels with a density of one per 20 acres or less if located within one mile of cities of less than 5,000 population and within two miles of cities of more than 5,000 population.

■ Cluster-development subdivisions consisting of small lots (typically half acre or less) for which city services are not expected and a common soil wastewater treatment system (cluster system) exists. Such developments would be located beyond one mile of cities less than 5,000 population and two miles of cities of more than 5,000 population. They may also consist of lakeshore development.

A Possible Approach to Avoiding Annexation Problems

While clear and specific definitions could contribute significantly to resolving some annexation issues, ultimately, the only way to prevent many land use problems will be through planning and cooperation.

Mechanisms to help local governments deal with multijurisdictional problems include the joint powers law, the joint planning board authorized in the city planning enabling statute and the joint orderly annexation board. While these tools have been used successfully in a number of applications, they have been largely ineffective in handling land use issues in the fringe area of cities. In part, this failure may lie in the lack of an appropriate incentive for communitywide participation in planning.

One possible approach to helping local governments avoid contentious annexation hearings while providing better direction for land use development and public service provision would be to consider cities and their fringe areas as a single community or subregion. Within this broader community would be the central city, portions of the neighboring townships and the county or counties in which the broader community is located. Because such jurisdictions are linked socially, economically and physically, land use decisions made in one often affect the others, sometimes at great cost.

Since decisions need to be made in the context of the entire community to promote wise land use decisions and efficient delivery of services, cooperative planning is imperative. Such planning, however, is possible only if all jurisdictions participate. A possible incentive to encourage this would be to allow all jurisdictions that are part of the area included in the broader community to share in the wealth generated by the new development, whether or not it occurs within their boundaries. For example, a township adjacent to a city may not be the most appropriate location for residential or commercial growth because of current growth trends, land use or soil types. It could, therefore, agree, as part of a plan for the broader community, to maintain, agricultural use of some of its land in return for a share of the wealth created by the new development located elsewhere.

This approach to avoiding annexation problems would entail the following elements:

- Joint planning organizations would be created for growing cities and their fringe areas outside the Twin Cities area. These organizations would include adjacent townships and the county or counties where the city is located. Joint planning organizations could be made mandatory for cities of more than 5,000 population and voluntary for cities of less than 5,000, unless significant growth is expected or the Municipal Board so orders.

- The joint planning organization would identify the boundaries of and create a comprehensive plan for the broader community. Existing local plans and land use regulations would be required to be consistent with the "community plan" and would be the chief means of implementation.

- The regional development commission would be responsible for ensuring that local plans are consistent with the community plan. If no regional commission exists, the Municipal Board would be responsible for ensuring consistency.

- Some form of fiscal disparities or revenue sharing would be authorized by the Legislature to allow affected jurisdictions (townships, counties and cities) that are part of a community plan to share in the wealth contributed by new development. Revenue generated would be shared among jurisdictions included in the broader community and would be in proportion to the amount of land contributed by each jurisdiction.

Conclusion

While annexation is important as a tool in adjusting city boundaries, it is not a substitute for planning. Although definitions suggested in this report may help the Municipal Board better determine areas appropriate for annexation, they will not get at the underlying issues and problems associated with some of the more contentious annexations.

With pressures mounting to provide public services more effectively and efficiently and to protect valuable agricultural land, it is more important than ever that local jurisdictions work together to effectively plan the future of their communities.

Annexation Laws of Selected States

Florida

Florida law permits annexation by either petition or ordinance of the city council. Annexation by ordinance requires that the area to be annexed be contiguous to the municipal boundaries and that part or all of it be developed for urban purposes. The statute defines "urban purposes" as "land used intensively for residential, commercial, industrial, institutional, and governmental purposes, including any parcels of land retained in their natural state or kept free of development as dedicated greenbelt areas." The law also requires that land developed for urban purposes meet one of three standards: 1) the resident population is at least two people per acre; 2) the resident population is at least one person per acre and the land has been subdivided into lots at least 60 percent of which are one acre or less in size; or 3) 60 percent of the lots in the subdivision are used for urban purposes and are five acres or less.

Georgia

Georgia provides for annexation through petition or application of property owners and passage of a city ordinance. City-initiated annexations must meet standards for contiguity and must be only of land that is developed for "urban purposes." "Urban purposes" is defined as:

> any area which, on the date of the adoption of the annexation resolution, has a total resident population equal to two persons for each acre of land included within its boundaries and is subdivided into lots and tracts such that at least 60 percent of the total acreage consists of lots and tracts five acres or less in size and such that at least 60 percent of the total number of lots and tracts are one acre or less in size.

Annexations involving petitions in Georgia do not mention the term "urban purposes"; thus, land annexed through the petition process apparently does not have to meet the definition for urban purposes.

Annexation Laws 1990

State	Municipal Annexation Authorized by General Law	Initiated by Petition of Property Owners in Area to Be Annexed	Initiated by City Ordinance or Resolution	Public Hearing	Referendum and Majority Approval in City Required	Referendum and Majority Approval in Area to Be Annexed Required	County Approval
Alabama	x	x	x			x	
Arkansas	x	x	x			x	
Arizona	x	x		x			
Arkansas	x	x	x	x	x	x	
California	x						x
Colorado	x	x		x		x	x
Connecticut							
Delaware	x					x	
Florida	x		x		x	x	
Georgia	x	x		x			
Hawaii							
Idaho	x		x				
Illinois	x	x	x	x	x	x	
Indiana	x	x	x				x
Iowa	x	x					
Kansas	x		x	x			
Kentucky	x		x	x	x	x	
Louisiana	x	x	x	x	x	x	
Maine							
Maryland	x	x	x	x	x	x	
Massachusetts	x						
Michigan	x	x	x	x	x	x	
Minnesota	x	x	x	x		x	
Mississippi	x		x	x			
Montana	x	x	x	x	x		x
Nebraska	x	x	x				
New Jersey	x	x	x				
New Mexico	x	x	x	x			x
New York	x	x		x		x	
North Carolina	x	x	x	x			x
North Dakota	x	x	x	x			x
Ohio	x	x		x			x
Oklahoma	x	x	x	x			
Oregon	x	x	x	x	x		
Pennsylvania	x	x		x		x	
Rhode Island							
South Carolina	x	x			x	x	
South Dakota	x	x	x	x	x		x
Tennessee	x	x	x	x	x	x	
Texas	x	x	x	x		x	
Utah	x	x	x				x
Vermont							
Virginia	x	x	x				
Washington	x	x	x	x		x	x
West Virginia	x	x			x	x	
Wisconsin	x	x	x		x		
Wyoming	x	x	x	x			

Source: U.S. Advisory Commission on Intergovernmental Relations

Indiana

In Indiana, an area is considered urbanized if it meets one of the following criteria: 1) it has a resident population of three or more people per acre; 2) it has subdivided land accounting for 60 percent of the land area; or 3) the area is zoned for commercial, business or industrial use.

Iowa

Annexations in Iowa must be initiated by petition of property owners in the area to be annexed. There is no provision for annexation by city ordinance. Iowa does use the term "urbanized area" in its annexation statute. The annexation law was amended in 1992 to change the definition of "urbanized area" to an area within two miles of a city; it had referred to the area within three miles of a city of 15,000 population or more. Annexations occurring in urbanized areas require action by the city council and a referendum having majority approval of voters in the annexing city. Annexations outside the urbanized area require approval of the city council and the City Development Board (boundary commission).

Nevada

Nevada law requires that any land proposed for annexation must be developed for "urban purposes." The criteria are very similar to those in North Carolina law, except that annexations must be approved by unincorporated towns containing the land to be annexed and *all* of the land to be annexed must be used for "urban purposes." Some exceptions to the urban purpose standards are based on contiguity of intervening nonurban areas. The term "used for residential purposes" also appears in different places in the annexation law. This term refers to land that is five acres or less in area and contains a permanent habitable dwelling. It also addresses the sphere of influence concept, which means an area into which the city plans to expand, within a specified period of time, as designated in the city's comprehensive plan.

North Carolina

Cities in North Carolina have strong annexation powers. Having determined that annexation is good and necessary to its economic viability, the state passed legislation making annexations relatively simple while limiting judicial review. The law requires that all or part of the land to be annexed be developed for "urban purposes." "Urban purposes" means one of the following:

- The land has a total resident population equal to at least two people for each acre of land included within its boundaries.

- The land has a total resident population equal to at least one person for each acre of land included within its boundaries and is subdivided into lots and tracts such that at least 60 percent of the total acreage consists of lots of five acres or less and such that at least 65 percent of the total number of lots are one acre or less.

- At least 60 percent of the total number of lots in the area at the time of annexation are used for residential, commercial, industrial, institutional or governmental purposes, and the land is subdivided into lots such that at least 60 percent of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental or institutional purposes, consists of lots of five acres or less.

- The land is the entire area of any county water and sewer district.

Oregon

Oregon provides for annexation by petition of property owners and ordinance of the city council. Unless required to do so by city charter, city councils are not required to hold elections within the city approving the annexation as long as 50 percent of the voters and all of the property owners have consented to annexation through signed statements. A public hearing is required.

Wisconsin

Wisconsin annexations are initiated by petition. Two methods are permitted: direct annexation and annexation by referendum. Direct annexation consists of a petition of the majority of voters in the area to be annexed who voted in the last gubernatorial election and who are either owners of half of the land in the area or owners whose aggregate assessed land value is over half of the assessed value of all land in area to be annexed. No referendum is required under direct annexation, but a public hearing is. Annexation by referendum only requires a petition signed by 20 percent or more of the voters in the area who voted in the last gubernatorial election, but 50 percent of these must be property owners either in total land area or having aggregate assessed value of more than 50 percent of the value of land in the whole area to be annexed. If the petition is approved by the city council, a referendum must be held of voters in the area proposed for annexation.

If the proposed annexation is in a county of more than 50,000 population, the state Department of Development must review the annexation petition before the annexation is approved. City annexation ordinances require a two-thirds majority vote of the council in order to be effective. The Wisconsin law does not mention the term "urban" or "suburban." The law requires areas for annexation to be contiguous but does not define what "contiguity" means.

References

Arizona Revised Statutes Annotated.

Berri, Brett W. "Annexation and Municipal Voting Rights." *Journal of Urban and Contemporary Law* 35 (1989):237.

Blevins, Steven W. "Municipal Annexations in North Carolina: A Look at the Past Decade." *Campbell Law Review* 14 (1992):135-85.

Boran, Barbara. "Illinois Annexation Agreements: Are We Behind the Times?" *Northern Illinois University Law Review* (Summer 1992):727-40.

Briggs and Morgan, P.A. *Case Analysis of the Annexation Process in Minnesota.* St. Paul, March 1991.

Burkhart, Lori A. (May 1991). "Municipal Annexation: An Update on Issues and Controversies." *Public Utilities Fortnightly* (May 1991): 47-49.

California Code Annotated.

Florida Statutes Annotated.

International City/County Management Association. *The Municipal Yearbook, 1993.* Washington, D.C.: International City/County Management Association, 1994.

Iowa Code Annotated.

League of Minnesota Cities. *Annexation of Land to Minnesota Cities, rev.* St. Paul, July 1987.

Metropolitan Council. *Regional Blueprint.* St. Paul, September 1994.

Minnesota State Planning Agency. *Growth Management.* St. Paul, 1981.

Minnesota Planning, *Growth Management*. St. Paul, July 1994.

Minnesota Planning, *Communities by Design.* St. Paul, October 1994.

Minnesota Statutes 414.01-414.09 (1994).

Nevada Revised Statues Annotated.

Official Code of Georgia.

Oregon Revised Statutes Annotated.

Place, Mary Shannon. "Municipal Annexation in Ohio: Putting an End to the Bitter Battle." *Cleveland State Law Review* 41 (1993):345.

Reynolds, Laurie. "Rethinking Municipal Annexation Powers." *Urban Lawyer* 14 (1992):53-109.

Rusk, David. *Cities Without Suburbs*. Washington, D.C.:Woodrow Wilson Center Press, 1993.

U.S. Advisory Commission on Intergovernmental Relations. *Local Boundary Commissions: Status and Roles in Forming, Adjusting and Dissolving Local Government Boundaries.* Washington, D.C: May 1992.

U.S. Advisory Commission on Intergovernmental Relations. *State and Local Roles in the Federal System*. Washington, D.C.: April 1982.