

# ANNEXATION IN IOWA AND THE “TEXTBOOK EXAMPLE” OF A VOLUNTARY ANNEXATION THAT HARDLY SEEMS VOLUNTARY

*Nicholas O. Cooper\**

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## PROLOGUE: JOHNSON COUNTY RESIDENTS BECOME PART OF TIFFIN’S PLAN

The small town of Tiffin, in its attempt to annex more than eight hundred acres from Johnson County, tried to take a proactive approach instead of a reactive approach.<sup>1</sup> The city had experienced significant population growth during

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\* J.D., Drake Law School, Des Moines, Iowa, 2004; B.B.A., University of Iowa, Iowa City, Iowa, 2001. The author would like to acknowledge Christie J. Scase, Assistant Attorney General for the Iowa Department of Justice and Steve McCann, City Development Board Adminis-

the 1990s through 2001, and expected such growth to continue.<sup>2</sup> The town was transforming from a “sleepy little farm town to a community that is now on the edge of a metropolitan area.”<sup>3</sup>

Individual landowners, Johnson County officials, and surrounding cities opposed the Tiffin annexation.<sup>4</sup> Tiffin, which supported the annexation, initiated an eighty-twenty annexation procedure to overcome this opposition.<sup>5</sup> An “eighty-twenty annexation” allows up to twenty percent of the total land to be annexed without the consent of those landowners.<sup>6</sup> In exchange for extended public services, Tiffin argued the annexation would increase town revenues and provide better control over expected growth in Tiffin and Johnson County.<sup>7</sup> The Tiffin annexation illustrates the competing interests that often emerge during annexations and the motivations behind these procedures. In addition, the Tiffin annexation provides an example of the eighty-twenty rule and the strong-arm tactics, lies, threats, and broken promises that often accompany this rule.<sup>8</sup>

## I. INTRODUCTION

Annexation is an important municipal device that allows a municipality to acquire desired growth prior to, during, and following annexation.<sup>9</sup> The annexation procedure ensures that municipalities provide needed services to residents and that persons living immediately outside cities contribute to these services.<sup>10</sup> Disputes often arise between cities seeking to annex property and persons living in unincorporated areas, who do not want to be considered residents of a city.<sup>11</sup>

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trator for the Iowa Department of Economic Development for their assistance in providing information for this Note.

1. CITY DEV. BD., STATE OF IOWA, TIFFIN PUBLIC HEARING MEETING TRANSCRIPT, NC01-16 at 5 (July 12, 2001) (on file with the City Development Board).
2. *Id.* at 4.
3. *Id.* at 5.
4. *See id.* at 17-39.
5. *See id.* at 2, 7.
6. *See* IOWA CODE § 368.7(1) (2003).
7. *See* CITY DEV. BD., STATE OF IOWA, *supra* note 1, at 5-11.
8. *See id.*
9. Jack Schluckebier, *Managing Growth and Increasing Revenues Through Annexation*, QUALITY CITIES, Nov. 1993, at 31.
10. *See* IOWA STATE UNIV. EXTENSION, A GUIDE FOR ANNEXATION AND OTHER CITY DEVELOPMENT ACTIONS 1 (Jan. 2000).
11. *See* Robert W. Parnacott, *Annexation in Kansas*, J. KAN. B.A. 28 (Nov./Dec. 2001)

There are four distinct types of land annexations in Iowa: voluntary land annexation outside of urban areas, voluntary annexation within urban areas, eighty-twenty voluntary annexation, and involuntary annexation.<sup>12</sup> This Note will examine and distinguish all four types of annexation.<sup>13</sup> In addition, this Note will discuss and analyze the costs and benefits associated with annexation from the perspective of a landowner, city, and county. Finally, this Note will examine the problems associated with Iowa's current annexation system and discuss possible resolutions.

The differences between voluntary annexations are minor when compared with the involuntary annexation requirements.<sup>14</sup> An examination of each of the four annexation procedures and requirements will provide a better understanding of why voluntary annexations are replacing involuntary annexations, particularly the eighty-twenty annexation replacing involuntary annexation.<sup>15</sup> The question then becomes whether the eighty-twenty process has achieved its desired purpose since its adoption by the Iowa Legislature in 1993.

## II. THE IOWA STATUTORY FRAMEWORK FOR ANNEXATION

Primarily, Chapter 368 of the Iowa Code governs annexation. Chapter 368 evaluates a city's and a private property owner's respective interests by "weighing the desire of cities to expand and control development at their borders against the desire of property owners to have a voice in what jurisdiction governs their land."<sup>16</sup> The City Development Board, a state administrative agency, conducts this balancing test, approving or denying proposed annexations.<sup>17</sup> The City Development Board was established in 1972 under the *Municipal Home Act* and

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(discussing the annexation process in Kansas).

12. See generally IOWA CODE § 368 (2003) (discussing the annexation procedure).

13. See generally *City of Des Moines v. City Dev. Bd.*, 633 N.W.2d 305 (Iowa 2001); *Dunn v. City Dev. Bd.*, 623 N.W.2d 820 (Iowa 2001); *Hiawatha v. City Dev. Bd.*, 609 N.W.2d 496 (Iowa 2000); *Waukeo v. City Dev. Bd.*, 590 N.W.2d 712 (Iowa 1999); *Deer Creek Homeowners Ass'n v. City Dev. Bd.*, 556 N.W.2d 155 (Iowa 1996); *Dickinson County v. City Dev. Comm.*, 521 N.W.2d 466 (Iowa 1994).

14. Compare IOWA CODE § 368.7, with *id.* §§ 368.11-368.17 (describing the statutory requirements for all four annexation procedures).

15. Interview with Steve McCann, City Dev. Bd. Adm'r, Iowa Dep't of Econ. Dev., Des Moines, Iowa (Jan. 30, 2003) (notes on file with author).

16. CHRISTIE J. SCASE, IOWA DEP'T OF JUSTICE, WORKING WITH THE CITY DEVELOPMENT BOARD 2 (May 31, 2002) (on file with the Iowa Dep't of Justice).

17. IOWA CODE §§ 368.9, 368.7(3) (2003).

expanded statewide in 1975.<sup>18</sup> The City Development Board is comprised of five members selected by the governor and confirmed by the Senate.<sup>19</sup> Four members are selected from different population distributions and one member is to “represent the general public.”<sup>20</sup> Appointment to the board lasts for a six-year staggered term, and in the case of vacancy, lasts for the unexpired term.<sup>21</sup>

A. *The Easy Annexation: Truly Voluntary Annexation*

The procedural steps a city must follow vary depending on the character of the annexation proceeding.<sup>22</sup> In contrast to voluntary annexation, the procedural requirements become more complex when there is opposition to the annexation.<sup>23</sup> In every annexation procedure, detail is the key to success.<sup>24</sup> “Even the most straight-forward voluntary annexation can be successfully challenged if care is not taken in preparing the application, notice, and council resolution.”<sup>25</sup>

A truly voluntary annexation occurs when landowners initiate the annexation and there is no opposition to the annexation. Truly voluntary annexation begins with a written application by landowners to the “council of the adjoining city requesting annexation of the territory.”<sup>26</sup> The proposed annexation cannot be within a two-mile radius of another city.<sup>27</sup> The application should include the date, landowner’s signature, and a map of the property proposed to be annexed in relation to the city’s borders.<sup>28</sup> The proposed application must be published in the official county newspaper of each affected county ten days prior to any action taken by the city council.<sup>29</sup> Similarly, the city council must mail a copy of the proposed annexation “by certified mail to the board of supervisors of each county [that] contains a portion of the territory at least fourteen business days prior to any action taken by the city council on the application.”<sup>30</sup> After approval by the council, the city clerk must file copies of the resolution, map, and

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18. IOWA STATE UNIV. EXTENSION, *supra* note 10, at IV.

19. IOWA CODE § 368.9(1).

20. *Id.* § 368.9(2)(a)-(e).

21. *Id.* § 368.9(1).

22. *See id.* § 368.6; *see also* SCASE, IOWA DEP’T OF JUSTICE, *supra* note 16, at 2.

23. SCASE, IOWA DEP’T OF JUSTICE, *supra* note 16.

24. *Id.*

25. *Id.*

26. IOWA CODE § 368.7(1).

27. SCASE, IOWA DEP’T OF JUSTICE, *supra* note 16, at 3.

28. IOWA STATE UNIV. EXTENSION., *supra* note 10, at 11.

29. IOWA CODE § 368.7(3).

30. *Id.* § 368.7(2).

legal description with the “secretary of state, the county board of supervisors of each county which contains a portion of the territory, each affected public utility and the state department of transportation.”<sup>31</sup> “The secretary of state shall not accept and acknowledge a copy of legal description, map, and resolution of annexation which would create an island.”<sup>32</sup> An “island” is defined as an area of land not within the city limits that is entirely enclosed by the “corporate boundaries of one or more cities.”<sup>33</sup>

There is no involvement by the City Development Board in “truly voluntary” annexations, and the procedure has been deemed a relatively easy procedure in comparison with other annexation procedures.<sup>34</sup> However, this does not mean that the procedure should be taken lightly; an error in any of the steps can result in a reversal of the proposed annexation.<sup>35</sup>

### B. *Urban Annexation*

The “urban dilemma” is controlled by Iowa Code Section 368.7(3) and involves voluntary annexation within two miles of another city.<sup>36</sup> A city attempting to annex must show by “substantial evidence” that the annexing city “will be able to provide substantial municipal services and benefits not previously enjoyed by the annexed territory and that the annexation is in the public interest.”<sup>37</sup> Generally, the requirements of urban annexation are the same as annexations in rural communities. During the initial step, all affected landowners submit a written application for annexation into a city.<sup>38</sup> Prior to city action, there must be publication in the official county newspaper in every county containing a portion of the land to be annexed “at least ten business days prior to any action by the city council on the application.”<sup>39</sup> Along with publication, each city within a two

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31. *Id.*

32. *Id.*

33. *Id.* § 368.1(10).

34. Interview with Steve McCann, *supra* note 15.

35. *See Gorman v. City Dev. Bd.*, 565 N.W.2d 607, 610-11 (Iowa 1997) (reversing a voluntary annexation application, based on errors in the legal description in relation to the adequacy of public notice).

36. SCASE, IOWA DEP’T OF JUSTICE, *supra* note 16, at 3.

37. *City of Des Moines v. City Dev. Bd.*, 473 N.W.2d 197, 202 (Iowa 1991) (citing *Town of Clive v. Colby*, 121 N.W.2d 115, 118-20 (Iowa 1963)) (holding that the City Development Board is not required to consider the requirements for involuntary annexation when examining a voluntary annexation).

38. IOWA CODE § 368.7(1).

39. *Id.* § 368.7(3).

mile radius of the proposed annexation must be provided notice by certified mail fourteen business days prior to any action being taken by the city council.<sup>40</sup> Such notification must be specifically sent to the county supervisors, regional planning authority, and affected public utilities.<sup>41</sup> After notification, both the city council and City Development Board must approve the proposed annexation.<sup>42</sup> No hearing is required for approval by the City Development Board.<sup>43</sup> However, these annexations are typically agenda items at the City Development Board's monthly meetings.<sup>44</sup> The Board sends notice of the meeting to all surrounding cities, to the county board of supervisors, and to the regional planning authority.<sup>45</sup> The annexing city is typically present in order to explain the motivation for the proposed annexation.<sup>46</sup> The annexation is completed by filing with the Secretary of State and county recorder.<sup>47</sup>

A voluntary annexation procedure within two miles of another city is nearly identical to voluntary annexations conducted in rural communities. The two key differences are the notification requirement, which requires notice to every city that is within two miles of the proposed annexation, and the required City Development Board approval.<sup>48</sup> This is one of the more uncommon annexation procedures because of the many competing interests involved, which often results in annexation contests being brought by interested parties.<sup>49</sup>

### C. *The Supposed Voluntary Annexation*

The eighty-twenty voluntary annexation was adopted in 1993,<sup>50</sup> and is considered Iowa's most controversial annexation procedure.<sup>51</sup> Section 368.7(1) governs eighty-twenty annexation and allows for up to twenty percent of the total

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40. *Id.*

41. *Id.*

42. SCASE, IOWA DEP'T OF JUSTICE, *supra* note 16, at 3.

43. *Id.*

44. Interview with Steve McCann, *supra* note 15.

45. *Id.*

46. *Id.*

47. *Id.* at 3.

48. IOWA CODE § 368.7(3) (2003).

49. Interview with Steve McCann, *supra* note 15.

50. 1993 IOWA ACTS 75 (codified IOWA CODE § 152 (1993)).

51. Interview with Ed Fallon, State Representative for the State of Iowa, Des Moines, Iowa (Oct. 18, 2002) (notes on file with author); Interview with Steve McCann, *supra* note 15; Interview with Christie J. Scase, Assistant Attorney General for the Iowa Department of Justice, Des Moines, Iowa (Oct. 4, 2002) (notes on file with author).

land to be annexed without the consent of such landowners.<sup>52</sup> The eighty-twenty rule was adopted to prevent the creation of “islands” (i.e., “land that is not part of a city and is completely surrounded by the corporate boundaries of one or more cities”<sup>53</sup>) and to create more uniform boundaries.<sup>54</sup> The eighty-twenty rule was created with the benefit of the majority in mind, but has, over the past ten years, slowly morphed into a tool that allows those with the most financial incentive to obtain the proposed annexation without having to go through the complex involuntary annexation procedure.

Like the prior two annexation procedures, the eighty-twenty process begins with an application by landowners to the city council requesting annexation into the city.<sup>55</sup> The application must include a map showing how the landowners’ property relates to the existing city and must clearly show that no islands would result from the annexation.<sup>56</sup> The city council then decides whether to include non-consenting territory within the annexation.<sup>57</sup> In making this decision, the city council considers the potential for the creation of islands as well as the creation of uniform boundary lines.<sup>58</sup> The council then notifies all affected public utilities, county supervisors, and non-consenting landowners by certified mail at least fourteen business days prior to the annexation hearing.<sup>59</sup> In addition, the city must publish notice of the application and public hearing in the official county newspaper of all counties affected by the proposed annexation.<sup>60</sup> The location and legal description of the proposed annexation must also be published.<sup>61</sup> The city council then conducts a hearing before voting on the proposed annexation.<sup>62</sup> Upon approval by the city council, a hearing is then set with the City Development Board. The board is required to obtain “super-majority (4/5) approval” for eighty-twenty annexation, and if approved, a copy of the approved annexation must be filed with the Secretary of State and county recorder’s offices.<sup>63</sup> This completes the eighty-twenty process and lays the initial groundwork

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52. IOWA CODE § 368.7(1) (2003).

53. *Id.* § 368.1(10).

54. *Id.* § 368.7(1).

55. *Id.*; IOWA STATE UNIV. EXTENSION, *supra* note 10, at 12.

56. IOWA STATE UNIV. EXTENSION, *supra* note 10, at 12.

57. *See* SCASE, IOWA DEP’T OF JUSTICE, *supra* note 16, at 4.

58. *Id.*

59. IOWA CODE § 368.7(3).

60. *Id.*

61. *Id.*

62. *See* SCASE, IOWA DEP’T OF JUSTICE, *supra* note 16, at 3.

63. *Id.*

for the debate as to whether the eighty-twenty process truly is voluntary annexation.

#### D. *Involuntary Annexation*

Involuntary annexation requires more than twenty percent of the landowners to oppose an annexation and is governed by Iowa Code Sections 368.11 to 368.17.<sup>64</sup> Involuntary annexation procedures are initiated by any of the following: “a city council, a county board of supervisors, a regional planning authority, or five percent of the registered voters of a city or territory involved in the proposal.”<sup>65</sup> Certified notice of the annexation must be served to all city councils and regional planning authorities affected by the proposed annexation.<sup>66</sup> A list of requirements that must be included in the petition is explicitly stated within the Iowa Code.<sup>67</sup> The petitioner must also send a letter of intent by certified mail to all of the following parties who are affected by the proposed annexation: any city council, regional planning authority, “each affected public utility, and each property owner listed in the petition.”<sup>68</sup> The notification must indicate that a public meeting will be held prior to the filing, and the date of the meeting must be published in the official county newspaper for all counties affected by the annexation.<sup>69</sup> At the meeting, minutes must be maintained for review by the City Development Board.<sup>70</sup> When the petition is finally submitted to the City Development Board, the Board can dismiss it only if the petition does not meet any of requirements listed in Iowa Code Chapter 368.<sup>71</sup> If the petition meets all the requirements listed in Section 11 of Chapter 368, and there hasn’t been a similarly rejected proposal within the last two years, then the City Development Board

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64. IOWA CODE §§ 368.11-368.17.

65. *Id.* § 368.11.

66. *Id.*

67. *Id.* § 368.11(1)-(13) (stating that if applicable, the petition must include a general statement of the proposal, a map of the territory, city, or cities involved, assessed valuation of platted and unplatted land, names of property owners, population density, description of topography, plans for disposal of assets and assumption of liabilities, description of existing municipal services including, but not limited to, water supply, sewage disposal, and fire and police protection, plans for agreements with any existing special service districts, a showing the annexation does not include territory within an existing city, the name of the proposed city, and formal agreements for maintenance within the annexation area).

68. *Id.* § 368.11(13).

69. *Id.*

70. *Id.*

71. *Id.* § 368.12.



appoints representatives from the annexing city and surrounding territory to serve with the Board members, forming a committee to consider the proposed annexation.<sup>72</sup> The appointed members must meet the required qualifications of Iowa Code Section 368.14 in order to take part in the procedure.<sup>73</sup>

After the numerous requirements for involuntary annexation are met, a public hearing is set.<sup>74</sup> Like the previous requirements for involuntary annexation, the notice requirements for involuntary annexation are clearly more demanding than involuntary annexation.<sup>75</sup> Notice of the hearing must be served to all city councils, county boards of supervisors, and regional planning authorities affected by the annexation.<sup>76</sup> In addition, a notice must be published *twice* in a newspaper of general circulation in all affected territories or cities.<sup>77</sup> This publication must include a description of the proposed annexation and an indication of “where the petition or plan is available for public inspection.”<sup>78</sup> Any member of the community may submit a written opinion and may be heard at the hearing.<sup>79</sup>

### 1. *The Presumption of Validity: An Uphill Battle*

The City Development Board confronts all voluntary annexation proposals, including eighty-twenty annexations, with a presumption of validity.<sup>80</sup> However, involuntary annexations have no such presumption. Clearly, this creates another obstacle for those proposing an involuntary annexation.

The Iowa Code sets forth a non-exclusive list the board must consider in determining the validity of an involuntary annexation.<sup>81</sup> The Board’s list of considerations includes, but is not limited to, commercial and industrial development, population growth, cost and adequacy of existing services to the area, and

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72. *Id.* § 368.14.

73. *Id.* § 368.14(1)-(5) (requiring, if applicable, a representative be appointed by the county board of supervisors from the territory incorporated, a representative be appointed by the city council of the city to be discontinued, a representative from the territory to be annexed or land owner of territory to be annexed, and a representative from the territory or city to be annexed appointed by the city council).

74. *Id.* § 368.15.

75. *See id.*

76. *Id.*

77. *Id.* (comparing the two-notice requirement with the one-publication requirement for voluntary annexation in § 368.7(3)).

78. *Id.*

79. *Id.*

80. *Id.* § 368.6.

81. *Id.* § 368.16.

the effect of the proposal on any alternate proposal.<sup>82</sup> In addition, Iowa Code Section 368.17 sets forth specific provisions in which involuntary annexations are barred from approval.<sup>83</sup> These additional provisions clearly create an uphill battle for those proposing an annexation. As a result, involuntary annexations are often unsuccessful.<sup>84</sup>

Within the specific barriers of Section 368.17, subsection four is often the point of dispute in involuntary annexations.<sup>85</sup> Subsection four states that the committee may not approve the annexation if the committee finds the annexing city is unable to provide “substantial municipal services and benefits not previously enjoyed”<sup>86</sup> and the primary motive of the annexation is not to increase revenues.<sup>87</sup> The language used by the Legislature has created controversy: when exactly are the proposed services “substantial” enough to justify involuntary annexation?<sup>88</sup>

In *Dickinson County v. City Development Committee*, the Iowa Supreme Court addressed Iowa Code Section 368.17.<sup>89</sup> In *Dickinson*, the City of Wahpeton attempted to involuntarily annex 425 acres of land from Dickinson County.<sup>90</sup> The City Development Board approved the annexation.<sup>91</sup> Dickinson County and Village Lakeshares filed a petition for judicial review.<sup>92</sup> The petition claimed Wahpeton did not meet the minimum statutory requirement, alleging Wahpeton did not prove it was able to provide the annexed property with “substantial municipal services and benefits not previously enjoyed by such territory.”<sup>93</sup>

The Iowa Supreme Court held the annexing city has the burden of establishing by a preponderance of the evidence that the city is able to provide “substantial municipal services and benefits not previously enjoyed by such terri-

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82. *Id.* § 368.16(3)-(6).

83. *Id.* § 368.17.

84. Interview with Steve McCann, *supra* note 15; *see also, e.g.*, *Dickinson County v. City Dev. Comm.*, 521 N.W.2d 466, 471 (Iowa 1994).

85. *See Dickinson County*, 521 N.W.2d at 467; *see also Deer Creek Homeowners Assoc. v. City Dev. Bd.*, 556 N.W.2d 155, 159-60 (Iowa Ct. App. 1996).

86. IOWA CODE § 368.17.

87. *Id.*; *see also Dickinson County*, 521 N.W.2d at 466 (finding the city had not proven the ability to provide substantial municipal services that were not previously enjoyed, and, based on this, reversed the City Development Board’s annexation approval).

88. *See, e.g., id.*; *see also Deer Creek*, 556 N.W.2d at 159-60.

89. *See* 521 N.W.2d at 467.

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

tory.”<sup>94</sup> Further, the court held the annexing city must prove more than the ability to provide municipal services and benefits, requiring proof that “the territory proposed for annexation *did not previously enjoy those services and benefits.*”<sup>95</sup> However, the proposed territory cannot be precluded from annexation by a showing that the territory previously benefited from the same services the annexing city seeks to extend.<sup>96</sup> The main deciding factor and turning point is *substantial* services and benefits.<sup>97</sup> If the territory already enjoys the same services and benefits the annexing city proposes to provide, then the annexing city must substantially extend these services to a greater degree.<sup>98</sup>

The court went through each service at issue (i.e., fire protection, civil defense, sewer, police, waste removal, water, street maintenance, zoning and development, street lights, ambulance services, electrical services, and professional staff) and determined the proposed annexation did not substantially extend the proposed services to a greater degree in comparison to the services currently in place.<sup>99</sup> In so doing, the court laid out the standard by which Iowa Code Section 368.17 is to be applied.<sup>100</sup>

## 2. *The Final Steps of Involuntary Annexation*

In order to vote on an involuntary annexation, there must be a quorum present, which at minimum must consist of three board members and half of the appointed committee.<sup>101</sup> For an annexation to be approved, a majority of those present must vote in favor of the proposal.<sup>102</sup> This vote must be completed within ninety days of the final hearing.<sup>103</sup> Upon approval by the committee, an election is held within the city and affected annexation territory.<sup>104</sup> After a successful election, the annexation procedure is complete and must be filed with the Secre-

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94. *Id.* at 468 (citing IOWA CODE § 368.17(4) (1993)).

95. *Id.* at 469.

96. *See id.* (citing *City of Cedar Falls v. Siglaff*, 144 N.W.2d 116, 120 (1966)).

97. *Id.* (emphasis in original).

98. *See id.*

99. *See id.* at 469-70.

100. *See id.*; *see also Deer Creek*, 556 N.W.2d at 159-60 (following the same procedure set forth in *Dickinson*, and holding the proposed annexation did provide services and benefits substantially more in degree when compared to the current system).

101. IOWA CODE § 368.14 (2003).

102. *Id.*

103. *Id.* § 368.19.

104. *Id.*

tary of State and county recorder.<sup>105</sup> A caveat is necessary in regard to the election procedure: “in the past three years, at least three<sup>106</sup> involuntary annexation proposals [that] were approved by the Board failed at election.”<sup>107</sup>

Clearly, involuntary annexation is a process with numerous steps and failure to complete any of the requirements may result in an annexation failure.<sup>108</sup> In a presentation to the Iowa Bar Association, the Attorney General’s Office warned any attorney representing a city to “be prepared to fight.”<sup>109</sup> The detailed process and potential battles common within the involuntary annexation process evinces why individuals proposing annexation should do everything possible to obtain the eighty-percent approval in order to preclude undergoing the involuntary annexation process.<sup>110</sup>

### III. THE COSTS AND BENEFITS OF ANNEXATION, ILLUSTRATED IN THE TIFFIN ANNEXATION

After examination of the various annexation procedures in Iowa, it is apparent that involuntary annexation and eighty-twenty annexation have the most extensive requirements. So why would any city take on this challenge? More specifically, what is motivating the city of Tiffin to annex over eight hundred acres from Johnson County? The answer depends on whether supporters or opponents of annexation are asked this question.<sup>111</sup>

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105. *Id.* §§ 368.19, 368.20.

106. *See* A01-01 Council Bluffs Involuntary Annexation (Election Date: Nov. 6, 2001); A99-06 Missouri Valley Involuntary Annexation (Election Date: Aug. 8, 2000); A99-02 Rock Valley Involuntary Annexation (Election Date: April 25, 2000) (on file with the City Development Board).

107. SCASE, IOWA DEP’T OF JUSTICE, *supra* note 16, at 7.

108. *See, e.g.*, Dickinson County v. City Dev. Comm., 521 N.W.2d 466, 471 (Iowa 1994) (reversing the City Development Board’s approval, based on Section 368.17 of the Iowa Code).

109. SCASE, IOWA DEP’T OF JUSTICE, *supra* note 16, at 7.

110. *See e.g.*, Tom Suk, *South-Side Annexation Stands; New LawsUIT Filed*, DES MOINES REG., Aug. 16, 2002, at 1B, 3B (discussing an ongoing battle for an involuntary annexation); *see also* Dunn v. City Dev. Bd., 623 N.W.2d 820, 823-25 (Iowa 2001) (demonstrating the difficulties that can arise in an involuntary annexation); City of Des Moines v. City Dev. Bd., 633 N.W.2d 305, 307-09 (Iowa 2001) (further demonstrating the difficulties surrounding an involuntary annexation).

111. *See generally* CITY DEV. BD., STATE OF IOWA, *supra* note 1.

### A. *The Benefits of Annexation*

Annexation has been around for nearly one hundred and fifty years,<sup>112</sup> and it generally provides numerous benefits to all those involved.<sup>113</sup> From a city's standpoint, annexation creates a mechanism that allows for adequate growth, the ability to design and furnish public services, and the guarantee that cities are compensated for services provided.<sup>114</sup> "If municipalities are expected to provide services effectively, they should have some control over when and where they provide services."<sup>115</sup> Failure to plan may create scattered development and encroach on farmland.<sup>116</sup> Through annexation, cities are able to concentrate development.<sup>117</sup> Annexation used in an appropriate manner can prevent urban sprawl, haphazard development, and run-down or underdeveloped areas.<sup>118</sup> "In addition to its value as a growth management tool, annexation should be considered for its potential" to enhance city revenues.<sup>119</sup> Increased city revenue can "improve existing services, add new services, or decrease the existing tax rates."<sup>120</sup>

A landowner may also benefit from annexation. Benefits may include, but are not limited to, tax incentives, land valuation increases, and public service benefits, all of which the county did not or could not provide to the landowner.<sup>121</sup> A common motivation for annexation from a rural Iowan's perspective is to obtain a service that the county cannot provide but a nearby city could.<sup>122</sup> In illustration, a city might provide city water to a landowner whose well dries up.<sup>123</sup>

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112. See IOWA CODE ANN. §368.1 (West 2003) (stating in the historical and statutory notes that the annexation statutes are derived from as early as 1858).

113. See IOWA STATE UNIV. EXTENSION, *supra* note 10, at 1; see also Parnacott, *supra* note 11, at 28 (citing LEAGUE OF KAN. MUNICIPALITIES, ANNEXATION IN KANSAS: A MANUAL CONCERNING THE ANNEXATION POWERS AND DUTIES OF CITIES § 2.3 (1991)).

114. See IOWA STATE UNIV. EXTENSION, *supra* note 10, at 4 (examining how early planning can prevent problems for cities); see also Parnacott, *supra* note 11, at 28 (citing LEAGUE OF KAN. MUNICIPALITIES § 2.3 (1991)).

115. IOWA STATE UNIV. EXTENSION, *supra* note 10, at 1.

116. See *id.*

117. Interview with Ed Fallon, *supra* note 51; see also IOWA STATE UNIV. EXTENSION, *supra* note 10, at 1.

118. Interview with Ed Fallon, *supra* note 51; see also IOWA STATE UNIV. EXTENSION, *supra* note 10, at 1.

119. Schluckebier, *supra* note 9, at 31.

120. *Id.*

121. Interview with Steve McCann, *supra* note 15.

122. *Id.*

123. *Id.*

Another example includes housing developments located outside city limits, in which the landowners could request annexation to help market the new development as a city service.<sup>124</sup>

Annexation can also provide benefits from a county's perspective.<sup>125</sup> Demand for services often becomes too high for counties, and annexation will take the pressure off their economic resources.<sup>126</sup> For example, a county may not be able to provide adequate police protection to citizens because of population fluctuations. Annexation of these territories by a nearby city alleviates these types of problems.<sup>127</sup>

### B. *The Costs of Annexation*

Often, the proposed benefits of annexation come at a cost, and these costs are the motivation behind why many residents fight annexation. Annexation can result in higher tax rates for annexed residents, higher costs for services, and lower standards of public service benefits.<sup>128</sup> Annexation also affects residents living within a city, for an increase in land and population may take city services away from residents already living within city limits.<sup>129</sup>

From a county's viewpoint, annexation can create problems in current capital infrastructure projects, prevent future planning of services and infrastructure, and eliminate agricultural land and services.<sup>130</sup> Cities may find it difficult to decide which areas should be included when planning for future infrastructures, including wastewater, police stations, fire stations, and more.<sup>131</sup> Further, when agricultural land is encroached by cities, landowners disinvest in that agricultural land.<sup>132</sup> Farmers know the risks of such land being annexed and "stop investing in the farm, in machinery and the structures[,]” speeding up annexation.<sup>133</sup>

The above-mentioned costs and benefits are illustrated in the Tiffin annexation. Tiffin argued the proposed area should be used to control future popu-

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124. *Id.*

125. *Id.*

126. *Id.*

127. *See, e.g., CITY DEV. BD., STATE OF IOWA, supra* note 1.

128. Interview with Steve McCann, *supra* note 15.

129. *Id.*

130. *See CITY DEV. BD., STATE OF IOWA, supra* note 1, at 17-28 (questioning Tiffin's ability to provide the necessary services that Johnston County is equipped to provide).

131. Interview with Steve McCann, *supra* note 15.

132. *Id.*

133. *See CITY DEV. BD., STATE OF IOWA, supra* note 1, at 19 (attempting to provide support for the opposition of the Tiffin annexation).

lation growth<sup>134</sup> and that the city should be compensated for services it was providing to parts of the proposed annexation.<sup>135</sup> The opposition, coming from Johnson County and non-consenting landowners, disputed Tiffin’s ability to control future growth. The opposition questioned Tiffin’s need for the land, based upon population data, and wanted “to take an active roll in helping our communities reduce sprawl type development.”<sup>136</sup> Further, Johnson County questioned Tiffin’s ability to provide services for the land being annexed.<sup>137</sup>

#### IV. THE “TEXTBOOK EXAMPLE” OF EIGHTY-TWENTY ANNEXATION AND THE MUSCLE BEHIND IT

When Tiffin initiated an eighty-twenty annexation, city representatives considered the annexation a textbook example of why the eighty-twenty annexation was created.<sup>138</sup> The eighty-twenty rule was adopted to prevent the creation of islands. However, the rule slowly shifted into a tool that allows annexation to occur through strong-arm tactics, lies, threats, and broken promises.<sup>139</sup> The eighty-twenty rule may achieve its purpose, creating more uniform boundaries or preventing the creation of islands;<sup>140</sup> however, it comes at a cost to those involved in the process.

Involuntary annexation requirements are clearly more demanding than requirements for the eighty-twenty annexation.<sup>141</sup> Logically, those proposing an annexation would prefer the smoothest procedure. Further, the Iowa Legislature amended Iowa Code Chapter 368 in 1991, establishing a presumption of validity for eighty-twenty annexations.<sup>142</sup> This presumption of validity shifts the burden from those proposing an annexation to those fighting it.<sup>143</sup> Clearly, if a possibility of obtaining eighty percent approval of the total annexation area exists, then

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134. *Id.* at 3-5.

135. *Id.* at 9.

136. *Id.* at 17.

137. *Id.* at 17-28 (questioning a city’s ability to provide adequate law enforcement and other services under an annexation proposal).

138. *Id.* at 1-2.

139. *See* CITY DEV. BD., STATE OF IOWA,, *supra* note 1, at 31-33.

140. *See, e.g.,* City of Waukee v. City Dev. Bd., 590 N.W.2d 712, 719-21 (Iowa 1999) (holding inclusion of the land at issue did meet the requirements of Section 368.7(1) of the Iowa Code).

141. *See generally* IOWA CODE § 368 (2003).

142. City of Hiawatha v. City Dev. Bd., 609 N.W.2d 496, 501 (Iowa 2000) (citing IOWA CODE § 368.7(4) (1999)).

143. Interview with Steve McCann, *supra* note 15.

those proposing annexation should do so in order to take advantage of the presumption of validity<sup>144</sup> and avoid the extensive requirements of involuntary annexation.<sup>145</sup>

Further, there is an increased risk of failure when attempting an involuntary annexation as compared to an eighty-twenty annexation.<sup>146</sup> Historically, involuntary annexations have often failed in Iowa.<sup>147</sup> The Iowa Legislature has attempted to compensate for this fact, but significant differences in the requirements for involuntary annexation and eighty-twenty annexation still exist.<sup>148</sup> These differences motivate those proposing annexation to avoid the involuntary procedure.<sup>149</sup> One particularly important difference between eighty-twenty annexation and involuntary annexation is Iowa Code Section 368.19, which only applies to involuntary annexation.<sup>150</sup> Section 368.19 requires an election to be held within the city annexing the territory as well as the annexed territory.<sup>151</sup> This voting requirement is a potential roadblock that is completely avoided in eighty-twenty annexation.<sup>152</sup> This added requirement should not be taken lightly: multiple involuntary annexation proposals approved by the City Development Board<sup>153</sup> have failed at the polls.<sup>154</sup> Such increased risk of failure demonstrates why those proposing annexation desperately seek to obtain eighty percent approval of the total annexation area in order to avoid involuntary annexation.

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144. See *City of Hiawatha*, 609 N.W.2d at 501 (discussing the presumption of validity).

145. See *Gorman v. City Dev. Bd.*, 565 N.W.2d 607, 609 (Iowa 1997) (citing *City of Waukee v. City Dev. Bd.*, 514 N.W.2d 83, 87 (Iowa 1994)) (discussing the background on voluntary annexation proceedings); see also IOWA CODE § 368.11 (2003).

146. See SCASE, IOWA DEP'T OF JUSTICE, *supra* note 16, at 7 (warning attorneys not to take the voting procedure for granted in involuntary annexation procedures).

147. Interview with Steve McCann, *supra* note 15.

148. *Id.*

149. *Id.*

150. Compare IOWA CODE § 368.19 (2003) (examining the requirements for involuntary annexation), with *id.* § 368.7(1) (setting forth requirements for eighty-twenty annexation); see also SCASE, IOWA DEP'T OF JUSTICE, *supra* note 16, at 3-5 (discussing the requirements of the involuntary annexation and eighty-twenty annexations).

151. IOWA CODE § 368.19.

152. See SCASE, IOWA DEP'T OF JUSTICE, *supra* note 16, at 7 (discussing "practical tips" for attorneys dealing with city development proceedings).

153. Interview with Christie J. Scase, *supra* note 51 (discussing A01-01 Council Bluffs Involuntary Annexation (Election Date: Nov. 6, 2001), A99-06 Rock Valley Involuntary Annexation (Election Date: Aug. 8, 2001), and A99-02 Missouri Valley Involuntary Annexation (Election Date: April 25, 2000), in which *all* were approved by the City Development and then voted down under the voting requirement for involuntary annexations) (notes on file with author).

154. SCASE, IOWA DEP'T OF JUSTICE, *supra* note 16, at 7.



Those proposing an annexation should strive to obtain approval from the annexing area. Without the eighty-twenty rule, one opposing landowner, regardless of the amount of land the owner has, could prevent an annexation from occurring, or at the very least, significantly increase its cost.<sup>155</sup> Furthermore, without the eighty-twenty rule, boundaries would be inconsistent and islands would be created.<sup>156</sup> Both of these results create a disincentive to those attempting an annexation, for the annexing area has to show its ability to provide services to the area.<sup>157</sup> Moreover, if one landowner objects to the proposed annexation, the annexing city may be required to pass through county roads or maintain long strips of land.

In the Tiffin example, the city received over ninety percent of the proposed annexing area.<sup>158</sup> Without the eighty-twenty rule, Tiffin’s boundaries could have become inconsistent, or one non-consenting landowner could have prevented the annexation from occurring.<sup>159</sup> The Tiffin annexation appears to perfectly demonstrate why the Iowa Legislature created the eighty-twenty rule. Therefore, the problem is not the eighty-twenty rule or whether the rule achieves its desired purpose; instead, the problem is the inappropriate behavior that those attempting to annex often employ in order to obtain the required eighty percent approval.

The Tiffin “textbook” eighty-twenty annexation is one example of the lies, threats, and broken promises that city officials often engage in to obtain the approval needed for an eighty-twenty annexation.<sup>160</sup> In the Tiffin eighty-twenty hearing before the City Development Board, one non-consenting landowner described the warnings made by Tiffin officials.<sup>161</sup> “Many of those who requested voluntary annexation did so because they were *warned* by Tiffin that they were in *immediate danger* of being annexed by Coralville.”<sup>162</sup> Shortly after this resident spoke, the Mayor of Coralville addressed the City Development Board.<sup>163</sup> The mayor stated, “if anyone has told people that Coralville’s about to annex them, that is *completely false* because we have no intention of annexing any

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155. See *City of Hiawatha v. City Dev. Bd.*, 609 N.W.2d 496, 499-500 (Iowa 2000) (finding that involuntary parcels can be used to connect voluntary parcels).

156. See *id.*

157. Interview with Steve McCann, *supra* note 15.

158. CITY DEV. BD., STATE OF IOWA, *supra* note 1, at 7.

159. See IOWA CODE § 368.7(1) (2003).

160. See CITY DEV. BD., STATE OF IOWA, *supra* note 1, at 31-33.

161. See *id.* at 31.

162. *Id.* (emphasis added).

163. *Id.* at 32.

property in this area.”<sup>164</sup> Further, the mayor discussed Tiffin’s refusal to even meet with Coralville, in addition to Tiffin’s total lack of cooperation.<sup>165</sup>

Warnings are often used as a tactic to obtain the required approval rating. When considering whether to agree to annexation, residents are often warned that if they do not agree to an annexation, they should nonetheless be prepared for another annexation to engulf the area in which they reside. The officials providing this false information will then strongly argue that their proposed eighty-twenty annexation would benefit the landowners significantly more than the annexation that would *supposedly* occur in the alternative.<sup>166</sup> This is one of several different strategies employed by cities in an attempt to gain the required approval rating for an eighty-twenty annexation. In the Tiffin annexation, officials used the false impression of potential annexation by Coralville as one tool to obtain the required eighty percent approval.<sup>167</sup>

Another common tactic used to meet the eighty percent requirement involves tax abatements.<sup>168</sup> Taxes are often a major concern for residents in annexation proceedings.<sup>169</sup> When annexed into a city, a resident incurs a city tax and a county tax. These combined taxes are traditionally higher than the county tax the resident was paying prior to annexation into the city.<sup>170</sup> Those proposing annexation recognize the financial concerns and often create tax abatement incentives for property owners.<sup>171</sup> The use of such abatements would appear to benefit both sides involved in the annexation. However, once again, the problem is not the use of such incentives; the problem is how these incentives are applied.

Cities are granted the authority to apply transition imposition (i.e., tax abatements) of taxes under Iowa Code Section 368.7(3), in conjunction with section 368.11(13). Iowa Code Section 368.11(13) allows a city to offer exemptions but the city “shall not allow a greater exemption from taxation than the tax exemption formula schedule provided under Sections 427B.3(1)-(5).”<sup>172</sup> Iowa Code Section 427B.3(1)-(5) sets out a five-year schedule for the transition, which serves as a cap on the amount offered through abatement.<sup>173</sup> Those attempting to

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164. *Id.* (emphasis added).

165. *Id.*

166. *See id.* at 30, 32.

167. *See id.* at 32.

168. Interview with Steve McCann, *supra* note 15; interview with Christie J. Scase, *supra* note 51.

169. Interview with Steve McCann, *supra* note 15.

170. *Id.*

171. *See, e.g.,* CITY DEV. BD., STATE OF IOWA, *supra* note 1, at 31.

172. IOWA CODE § 368.11(13) (2003).

173. *See id.* § 427B.3 (beginning with 75% the first year, 60% the second year, 45% the

annex will *only* offer the tax abatement to those who voluntarily join the annexation.<sup>174</sup> Those making the proposition will then tell the landowners the offer is only available for a limited time. If the landowners do not voluntarily join within the specified time, the landowners lose the tax abatement benefit. Those proposing the annexation then explain the eighty-twenty procedure to the landowners and imply that the annexation will take place with or without the landowner’s support. An annexing city may give a landowner the impression that it already has the necessary approval to obtain the annexation, even without the landowner’s own approval, which could be a complete misrepresentation. Landowners who are faced with this falsity consent within the specified time period in order to gain the proposed tax abatement. Combining the tax abatement deadline with false or misleading statements propels most landowners into voluntarily consenting in order to obtain the exemption. Once again, the alleged “textbook” example of the Tiffin eighty-twenty annexation illustrates this problem.<sup>175</sup> One of the landowners explained an offer he received from city officials, which was contingent upon the landowner voluntarily joining the annexation.<sup>176</sup> Tiffin “recently offered me a tax abatement for five years if I would *voluntarily* annex to the City . . . [p]rovided I did so, *prior to tonight’s meeting.*”<sup>177</sup>

Tiffin landowners were confronted with threats and misrepresentations within their “textbook” example of eighty-twenty *voluntary* annexation. First, landowners were falsely informed that they would be annexed by Coralville if the Tiffin annexation failed.<sup>178</sup> The landowners were then offered a tax abatement to voluntarily join the Tiffin annexation.<sup>179</sup> Finally, those proposing annexation presented a deadline the landowners would have to join by in order to obtain the tax benefit.<sup>180</sup> These threats and misrepresentations place into question how many landowners within the ninety percent approval rating were truly voluntary in this so called “textbook” example of eighty-twenty annexations.

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third year, 30% the fourth year, and 15% the fifth year).

174. Interview with Steve McCann, *supra* note 15.

175. *See generally* CITY DEV. BD., STATE OF IOWA, *supra* note 1.

176. *See id.* at 31.

177. *Id.* (emphasis added).

178. *See id.* at 32.

179. *Id.* at 31.

180. *Id.*

## V. CONCLUSION: ACHIEVING ITS PURPOSE AT WHAT COST?

The eighty-twenty rule was adopted to prevent the creation of islands and to create more uniform boundaries.<sup>181</sup> The rule seems to achieve its purpose. Nonetheless, strong-arming, lies, threats, and broken promises continue to occur. The Tiffin annexation is just one example of the tactics employed by city officials who know how to use this procedure to their advantage.

Who is to blame for these continued tactics? Clearly, the fault does not lie with the City Development Board, for the Board follows the exact procedures set forth by Iowa law. Although the Board knows these types of tactics regularly occur, it is left with no available remedies. In addition, it is difficult to blame those initiating the annexation. The eighty-twenty rule, in its current state, affords the opportunity of those annexing to strong-arm, lie, threaten, and break promises. However, employing such tactics allows those annexing to avoid the extensive requirements and associated risks involved with involuntary annexation.

The Iowa Legislature has classified the eighty-twenty annexation as voluntary, but landowners are presented with no viable choice. Iowa landowners are continuously faced with the belief that annexation is inevitable. The current structure of the eighty-twenty annexation encourages such negative tactics. There have been no repercussions that have been implemented by the legislature or the courts. As a result, these tactics will continue to occur until such activities are deemed impermissible.

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181. IOWA CODE § 368.7(1) (2003).