

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
600 NORTH ROBERT STREET
SAINT PAUL, MN 55101

In the Matter of the Petition
for Incorporation of Baldwin
Township (I-75)

**BALDWIN TOWNSHIP'S
BRIEF IN SUPPORT OF
INCORPORATION OF
BALDWIN TOWNSHIP**

OAH Case No. 71-0330-39760

APPLICABLE LEGAL STANDARD

Baldwin Township's Incorporation Petition is governed by Minn. Stat. § 414.02. In an incorporation proceeding, the Court must consider factors (1) through (13) in Subdivision 3 of § 414.02 (these factors are enumerated and discussed in the Argument portion of this brief).¹

Incorporation may be granted under Minn. Stat. § 414.02 if the Court finds any one of the following to be true:

1. The property to be incorporated is now, or is about to become, urban or suburban in character, or
2. That the existing township form of government is not adequate to protect the public health, safety, and welfare, or
3. The proposed incorporation would be in the best interests of the area under consideration.

The Court may deny the incorporation if the area, or a part thereof, would be better served by annexation to an adjacent municipality. The Court may alter the boundaries of the

¹ Where practicable, citations are made to the record in the first instance such evidence appears in this brief. Subsequent references to the same evidence are generally not cited to the record.

proposed incorporation by increasing or decreasing the area to be incorporated so as to include only that property, which is now, or is about to become, urban or suburban in character, or may exclude property that may be better served by another unit of government. The Court may also alter the boundaries of the proposed incorporation so as to follow visible, clearly recognizable physical features for municipal boundaries.

I. There is No Statutory Authority to Annex Property from Baldwin Township to the City of Princeton in this Proceeding.

A. Minn. Stat. § 414.02, Subd. 3(d) Only Authorizes Property to be Excluded from the Incorporated Township’s Boundaries and Does Not Authorize the Annexation of Property to an Adjacent Municipality.

The plain language of Minn. Stat. § 414.02 contemplates the exclusive method for incorporation. This statute does not in any way authorize annexation pursuant to an incorporation petition. Authorization for annexation is governed by Minn. Stat. §§ 414.031, 414.0325, and 414.033. The separation of annexation proceedings from Minn. Stat. § 414.02 was an intentional choice by the Legislature.

When the Legislature uses limiting or modifying language in one part of a statute, but omits it in another, the Court regards that omission as intentional and will not add those same words of limitation or modification to parts of the statute where they were not used. *Gen. Mills, Inc. v. Comm'r of Revenue*, 931 N.W.2d 791, 800 (Minn. 2019); *see also Seagate Tech., LLC v. W. Digital Corp.*, 854 N.W.2d 750, 759 (Minn. 2014) (noting that “a condition expressly mentioned in one clause of a subdivision provides evidence that the Legislature did not intend for the condition to apply to other clauses in which the condition is not stated” and that we “cannot add words or meaning to a statute that were intentionally or inadvertently omitted” (citation omitted) (internal quotation marks omitted)); *see also Hutchinson Tech., Inc.*, 698 N.W.2d at 8 (stating that “we will

not add requirements to the statute beyond those specified by the legislature”). We assume that Congress “acts intentionally and purposely” when it “includes particular language in one section of a statute but omits it in another section of the same Act.” *Polselli v. Internal Revenue Serv.*, 598 U.S. 432, 439 (2023) (citing *Sebelius v. Cloer*, 569 U.S. 369, 378, (2013)) (internal quotation marks omitted).

Minn. Stat. § 414.02 Subd. 3(d) states,

“The chief administrative law judge may alter the boundaries of the proposed incorporation by increasing or decreasing the area to be incorporated so as to include only that property which is now, or is about to become, urban or suburban in character, or may *exclude property* that may be better served by another unit of government. The chief administrative law judge may also alter the boundaries of the proposed incorporation so as to follow visible, clearly recognizable physical features for municipal boundaries.” [Emphasis added]

The above statutory language limits an administrative law judge’s discretion to “increase or decrease the area to be incorporated” or to “exclude property that may be better served by another unit of government.” An administrative law judge’s authority does not extend to annexing that property to another adjacent municipality even if the evidence were to show that the adjacent municipality could better serve such property. The authority to exclude a portion of the petitioning party’s property from the boundaries of a newly incorporated city is distinct from and does not necessitate the annexation of that property to an adjacent municipality.

The Legislature knew how to authorize the annexation of property and did not do so in Minn. Stat. § 414.02. Instead, the Legislature created distinct rigid statutory methods for annexing unincorporated property under separate statutes. Therefore, if this Court incorporates only part of a township, thereby leaving a portion of the former township unincorporated, another municipality wishing to annex the unincorporated property would need to follow a prescribed method under

either Minn. Stat. §§ 414.031, 414.0325, and 414.033 in order to annex that property to the adjacent municipality.

The Court does not have the authority to annex any of the property contained within Baldwin's incorporation petition to the City of Princeton because the statute governing incorporation does not authorize such conduct and the City of Princeton failed to file a petition to annex the property under Minn. Stat. § 414.031, a properly executed orderly annexation agreement under Minn. Stat. § 414.0325,² or an ordinance annexing such land under Minn. Stat. § 414.033.

B. The Minnesota Municipal Commission Previously Acknowledged Its Lack of Authority to Annex Property During an Incorporation Proceeding Pursuant to Minn. Stat. § 414.02.

In 1972, the Minnesota Municipal Commission, the predecessor to the Municipal Boundary Adjustments Unit, heard the Town of Grant's Resolution for Incorporation as the City of Grant. The Town of Grant, the City of Dellwood, and the City of Stillwater all appeared at the hearings with counsel. The City of Dellwood commissioned a consultant's report received by the Commission which urged annexation of part of the area proposed for incorporation. The Commission noted in their Findings of Fact that the petitioners failed to address, "unchallenged expert testimony to the effect that isolated areas in the Northwest corner of the township would be better served by annexation to Dellwood." However, Dellwood did not follow a prescribed method to annex the Northwest corner of the Town of Grant under either Minn. Stat. §§ 414.031, 414.0325, or 414.033.

Despite the Commission's finding that a portion of the Town of Grant would be better served by annexation, the Commission acknowledged its lack of authority to annex property to an

² This Court does have the authority to annex the properties contained in the two orderly annexation agreements that will be filed with the Court as stipulated by the parties in the post-hearing scheduling proceedings.

adjacent municipality during an incorporation proceeding pursuant to Minn. Stat. § 414.02. The commission wrote,

*The Statute goes on to say “The commission may deny the incorporation if the area or part thereof, would better be served by annexation to or consolidation with an adjacent municipality.” The commission’s best judgement on the record and again supported by the expert testimony of petitioner’s and Metropolitan Council planners is that at least part of the northwest [sic] area proposed for incorporation would be better served by annexation to Dellwood. We have no jurisdiction – no power – under the statute to consider or order the annexation. Our only alternative, other than the denial of the incorporation, would be to exclude the area and incorporate the remainder of the township. This would leave Grant Township of only a few sections of land and is obviously unsatisfactory. Perhaps the ultimate solution, suggested by some persons, is an amendment to the incorporation legislation giving the commission the jurisdiction to order annexations in this situation, but that is up to the legislature.*³ [Emphasis added]

Minn. Stat. § 414.02, Subd. 3(c) states, “The chief administrative law judge may deny the incorporation if the area, or part thereof, would better be served by annexation to an adjacent municipality.” Minn. Stat. § 414.02 uses essentially the same language when the Commission issued its order denying Grant’s incorporation in 1972 as it does today.⁴

Based upon the Commission’s past precedent and the clear language of Minn. Stat. § 414.02, this Court does not have the authority to order an annexation of property to the City of Princeton as no party to this proceeding has filed the necessary annexation resolution which confers jurisdiction on this Court to order such an annexation.

C. All Past Annexations Occurring within Close Temporal Proximity of an Incorporation Proceeding Occurred Pursuant to an Orderly Annexation Agreement or Pursuant to a Petition to Annex Property that was Heard Concurrent with or Subsequent to the Incorporation Proceeding.

³ See Exhibit A, “I-48 Grant, Findings of Fact, Conclusions of Law, and Order, In the Matter of the Resolution of the Town of Grant for Incorporation as the City of Grant”, dated February 7, 1974.

⁴ See Exhibit B, “Minn. Stat. § 414.02 (1967)”.

In the State of Minnesota, there have been several historical annexations occurring concurrent with or subsequent to an incorporation proceeding. However, these concurrent or subsequent proceedings all involved a party petitioning for incorporation under Minn. Stat. § 414.02 and a party contemporaneously or subsequently petitioning for annexation under either Minn. Stat. §§ 414.031, 414.0325, or 414.033. These examples include the Town of Forest Lake and the City of Forest Lake, the Town of St. Augusta and the City of St. Cloud, Rice Lake Township and the City of Duluth, as well as Empire Township and the City of Farmington.

i. The Town of Forest Lake and the City of Forest Lake

In 1997, more than 100 property owners from the Town of Forest Lake filed a petition⁵ with the Minnesota Municipal Board requesting annexation of Forest Lake Township to the City of Forest Lake. Approximately one year later, the Town of Forest Lake filed a petition with the Minnesota Municipal Board requesting incorporation of the Town. In early 1998, both the residents' petition to annex and the Town's petition to incorporate were submitted to the Minnesota Municipal Board before both petitions were dismissed on April 6, 1998, by agreement of the parties. In 1999, the Municipal Board was presented with a new petition for annexation which ultimately was granted in its entirety.

Here, the residents of the Town of Forest Lake properly filed a petition with the Minnesota Municipal Board requesting annexation of Forest Lake Township to the City of Forest Lake pursuant to Minn. Stat. § 414.031, Subd. 1(a). Even though the residents' subsequent petition for annexation was not contemporaneous with a petition to incorporate, prior to the agreement of the

⁵ See Exhibit C, "In the Matter of the Petition of the Residents of the Town of Forest Lake for Annexation of the Unincorporated Adjoining Property to the City of Forest Lake, Minnesota Pursuant to Minnesota Statutes 414.031", dated April 28, 1999.

parties to dismiss their respective petitions in 1998, the parties both filed concurrent petitions for their request to incorporate or annex.

ii. The Town of St. Augusta and the City of St. Cloud

In 1999, the Town of St. Augusta and the City of St. Cloud were discussing proposals regarding annexation and incorporation of territory within the Town. On January 14, 1999, the Town of St. Augusta filed a petition with the Minnesota Municipal Board to incorporate as the City of Neenah. The City of St. Cloud was also contemplating annexation of property in the Town of St. Augusta at that time.

On May 17, 1999, the City of St. Cloud filed a resolution⁶ requesting the annexation of territory within the Town of St. Augusta to the City of St. Cloud. The resolution requested the City Administration wait to file the City's resolution with the Minnesota Municipal Board to provide the Town an opportunity to receive a continuance of their incorporation proceeding in an effort to facilitate resolution via an agreement of the parties. However, on May 18, 1999, the City of St. Cloud filed its petition to annex a portion of St. Augusta Township to the City of St. Cloud. On the same date, Frederick Schilplin and RCH Partnership submitted petitions requesting their property located within St. Augusta be annexed to the City of St. Cloud pursuant to Minn. Stat. § 414.031.

The Court issued an order⁷ granting a substantial portion of the City of St. Cloud's petition for annexation, granting Frederick Schilplin's petition of annexation, granting RCH Property's

⁶ See Exhibit D, "1999-5-137, Resolution Calling for the Annexation of Certain lands Within the Limits of the Town of St. Augusta to the City of St. Cloud", dated May 17, 1999.

⁷ See Exhibit E, "10-2900-12548-2, Findings of Fact, Conclusions of Law, and Order, In re the Petition of St. Augusta Township for Incorporation, In re the Petition for Annexation of Unincorporated Adjoining Territory to the City of St. Cloud", dated March 10, 2000.

petition for annexation, and granting the incorporation of the Town's remaining property not annexed by the City of St. Cloud.

Here, the City of St. Cloud did not wait for an administrative judge's incorporation ruling to annex property. Nor did the administrative judge as a part of the Town's incorporation proceeding annex unincorporated property to an adjacent municipality sans a timely petition from a named party. The only property that was annexed in this instance was property that the City and other named parties properly noticed and petitioned for pursuant to Minn. Stat. § 414.031.

iii. Rice Lake Township and the City of Duluth

On June 10, 2014, the Town of Rice Lake adopted a resolution indicating its intent to incorporate. On October 13, 2014, the Town of Rice Lake and the City of Duluth adopted a joint resolution designating 240 acres within the Township as appropriate for annexation and approved an orderly annexation agreement pursuant to Minn. Stat. § 414.0325, Subd. 1. On May 30, 2015, the Court issued an order⁸ granting the annexation of the agreed upon 240 acres to Duluth. Subsequently, on August 20, 2015, the Court granted the Town of Rice Lake's petition to incorporate.

Here, the parties agreed to an orderly annexation agreement pursuant to Minn. Stat. § 414.0325, Subd. 1. The Court's order was consistent with the parties' agreement and was supported by Minnesota statute.

iv. Empire Township and the City of Farmington

⁸ See Exhibit F "OAH 82-0330-31731, Findings of Fact, Conclusions of Law, and Order, In the Matter of the Petition for Incorporation of Rice Lake Township", dated August 20, 2015. The Court technically heard and ruled on the parties' second orderly annexation agreement. The first orderly annexation heard by the Court on February 15, 2014, was dismissed due to lack of compliance with statutory notice provision.

In 2022, the Town of Empire filed a petition requesting incorporation of the Township including all property other than that designated for an orderly annexation to the City of Farmington. On August 1, 2022, the parties filed a joint resolution to annex the remaining property designated in the mutually agreed upon orderly annexation agreement pursuant to Minn. Stat. § 414.0325, Subd. 1. As a part of the agreement, the City of Farmington agreed to support and not oppose the Town of Empire’s petition to incorporate as a condition precedent for the annexation of property that was previously a part Empire Township to the City of Farmington.

On August 31, 2022, the Court issued an order⁹ granting the Township’s amended petition and ordered the incorporation of the Township as the City of Empire. Since the condition precedent of Empire Township’s incorporation had been satisfied, the Court also approved the parties’ request for annexation of the agreed upon property.

Here, like what occurred with Rice Lake Township and the City of Duluth, the parties entered into an agreement to allow incorporation in exchange for a joint resolution to annex pursuant to Minn. Stat. § 414.0325, Subd. 1. The Court’s annexation of property to the City of Duluth was supported by Minnesota statute.

Historically, annexations have not stemmed from a petition for incorporation alone. That is because Minn. Stat. § 414.02 does not authorize this Court to annex property to an adjacent municipality. Such annexations have only occurred via a prescribed method under either Minn. Stat. §§ 414.031, 414.0325, or 414.033, or more simply put, when statutorily authorized. Princeton’s request for annexation of approximately 9,200 acres of territory from Baldwin

⁹ See Exhibit G, “OAH 71-0331038560, Order Approving Annexation, In the Matter of the Orderly Annexation of Certain Real Property to the City of Farmington from Empire Township”, dated August 31, 2022.

Township cannot be granted by this Court as such an annexation is not authorized under Minnesota law due to Princeton's failure to file a petition under Minn. Stat. § 414.031 as required by statute.

II. Analysis of Statutory Incorporation Factors.

A. Present Population and Number of Households, Past Population and Projected Population Growth for the Subject Area.

The population and household evidence in the record demonstrates that most of the Township is suburban in character, and that the Township will continue to suburbanize in the future. Specifically, this evidence includes the following:

1. The Township had a population of 7,043 residents in 2022.¹⁰
2. The Township had 2,531 households in 2020.¹¹
3. Baldwin is the 3rd most populous township in Minnesota.¹²
4. Baldwin's population grew 53.7% between 2000 and 2020.¹³
5. The number of Baldwin's households grew 62.7% between 2000 and 2020.¹⁴
6. If incorporated, Baldwin would have a higher population than over 721 existing cities in Minnesota (based on 2022 population estimates), placing it in the 84th percentile of all cities in Minnesota ranked by population.¹⁵

These facts clearly demonstrate Baldwin's transition from a rural Township to a full-fledged suburb on the edge of the metropolitan area. Its projected population growth indicates that this suburbanization trend will continue over the next 20 years as its population is projected to increase from 7,104 in 2020 to 8,762 in 2040.¹⁶ Baldwin Township's existing population, the fact that it already has a public works department with more road maintenance equipment than the neighboring City of Princeton and has had its own fire department for more than 20 years are

¹⁰ Exhibit 4, p. 7.

¹¹ Exhibit 4, p. 8, Table 2.

¹² Ex. 4 at 7.

¹³ Ex. 4 at 6, Table 1.

¹⁴ Ex. 4 at 8, Table 2.

¹⁵ Ex. 4 at 7.

¹⁶ Ex. 4, at 9, Table 3.

strong indicators of the fact that it has more than sufficient population and existing infrastructure to fully function as a city rather than a township.

B. Quantity of Land Within the Subject Area; the Natural Terrain Including Recognizable Physical Features, General Topography, Major Watersheds, Soil Conditions and Such Natural Features as Rivers, Lakes and Major Bluffs.

The Township area to be incorporated consists of approximately 22,177 acres (34.6 square miles).¹⁷ The natural terrain in Baldwin is moderately rolling in the southern area and relatively flat in the north. Elevations range from 950 feet above mean sea level to 1,050 feet in elevation in the Township.¹⁸ The primary soil type within the Township is Zimmerman fine sand consisting of very deep, excessively drained soils that generally support continued suburban development.¹⁹

There are a number of lakes, rivers and wetlands in the Township, all of which present barriers to the installation of municipal sewer and water utilities in the Township.²⁰ The Rum River Wild and Scenic Overlay District governs lands adjacent to the Rum River, which also requires larger residential lot sizes and acts as a significant barrier to the extension of municipal water and sewer utilities in eastern part of the Desired Annexation Area.²¹

Wetlands in the north part of the Township are extensive and significant. Immediately to the south and west of the City of Princeton in Baldwin Township are a series of large wetland complexes that acts as both a physical and financial barrier to the extension of municipal water and sewer utilities in this area.²²

¹⁷ Ex. 4 at 17, Table 5.

¹⁸ Ex. 4 at 9.

¹⁹ Ex. 4 at 9-10.

²⁰ Ex. 4, Appendix A at pp. 6-7; Exhibit A-6.

²¹ Ex. 4, Appendix A at p. 7; Exhibit A-6.

²² Ex. 4, Appendix A at pp. 6-7, 12; Exhibit A-6.

As was noted in the testimony of Mr. Daniel Licht, the more restrictive density requirements of the Wild and Scenic zoning overlay district mean that serving properties in this overlay district increases the cost to provide municipal sewer and water utilities to these properties. Likewise, properties that can only be served with utilities by traversing significant wetlands are also faced with more expensive utilities.

The Township's solution to these natural barriers to utility service is both cost effective and expedient: allow the properties to develop with wells and septic systems on lots large enough to ensure that there will be plenty of room for alternate drain fields should they be necessary at some point in the future. This development pattern has not only worked well, according to the testimony of Mr. Ethan Waytas, the market prefers this type of development to smaller-lot development such as the lots in the City of Princeton.

The City of Princeton appears to believe that the northern portion of Baldwin Township can be easily served with municipal utilities, yet the City's witnesses did not address how the City would deal with the increased costs of serving this area given the Wild and Scenic overlay requirements and the extensive wetlands in the area. Further, it appears the City's 3.5 residential units per acre density assumptions for this area²³ do not factor in the existence of these barriers to the extension of municipal sewer and water service, nor does the City explain how it will pay for this infrastructure when the densities do not reach the levels the City has assumed it would. To date, Baldwin's method of dealing with these natural obstacles to development appears to be the only proven method of development of the Township. Incorporation of the Township will allow this proven method of market-driven development to continue to expand as the needs of the Township's residents dictate.

²³ Exhibit 4, Appendix A, p. 5

C. Present Pattern of Physical Development, Planning, and Intended Land Uses in the Subject Area Including Residential, Industrial, Commercial, Agricultural, and Institutional Land Uses and the Impact of the Proposed Action on those Uses.

Existing land uses in Baldwin Township include a mix of land use types, including single-family residential neighborhoods, commercial properties, industrial properties, public uses, parks, and agricultural properties.²⁴ Of these uses, large lot residential uses predominate, accounting for 50.4% of the acreage in the Township.²⁵ This pattern of growth can best be seen on Map 5 in Exhibit 4, which depicts all lots that are 10 acres or less in size. The dispersal of these mostly residential lots has fragmented the remaining land in the Township in a manner that will effectively prevent it from being served with municipal utilities in a cost effective manner.²⁶ This leads to the conclusion that the remaining undeveloped agricultural land within the Township will continue to best develop using septic systems and wells on lots that are at least 2.5 acres in size.

Baldwin has planned for both its present and future development through its long- range comprehensive plan. Baldwin adopted its first comprehensive plan in 2014 providing a framework for continued growth and development in the Township, and took over planning and zoning enforcement from Sherburne County in 2022, allowing the Township to administer its own zoning and subdivision ordinances rather than have it administered by Sherburne County.²⁷

However, the Township's official controls, including its Zoning Ordinance, Comprehensive Plan and Subdivision Ordinance must continue to be consistent with the County's official controls and must be at least as restrictive as the County's official controls.²⁸

²⁴ Ex. 4, Existing Land Use Map at p. 15.

²⁵ Ex. 4 at 14, Table 4.

²⁶ Ex. 4, p. 14; Testimony of Jennifer Edison.

²⁷ Testimony of Bryan Lawrence.

²⁸ Ex. 4, pp. 17, 20.

Because the County's official controls are geared toward rural uses, the County's official controls will prevent the Township from rezoning lands to commercial or industrial uses without the County first agreeing to such rezoning.²⁹ Incorporation will free Baldwin from the County's one-size-fits-all rural zoning restrictions and allow Baldwin to better meet the needs and challenges that accompany continued suburbanization of the Township, including the rezoning of additional land to commercial and industrial zoning districts by eliminating the requirement that Baldwin's zoning be consistent with the County's Zoning.³⁰

The present pattern of physical development and intended land uses are largely suburban in nature, as evidenced by the following points:

1. Baldwin Township is already suburban in character in that it currently has over 7,000 residents living in 2,531 households, almost all of which are located on lots that are less than 10 acres in size, with the vast majority of those being in platted subdivisions.³¹
2. The Township's Comprehensive Plan continues Baldwin's current development pattern and will allow for the continued expansion of platted residential lots of a minimum of 2.5 acres in size in platted subdivisions.³²
3. As noted by Mr. Waytas, there exists a strong market for residential development on 2.5 acre lots within commuting distance of the Twin Cities market, and Baldwin Township is helping to satisfy that housing demand as additional residents move from the Metropolitan Area to Baldwin Township.

Given these undisputed facts, the Township is now suburban in character and will continue to develop in a suburban manner into the future. Further, the Township's location on the edge of the metropolitan area along a major transportation corridor assures that the growth and development of the Township will continue to occur with or without incorporation as a city due to the market demands for large-lot suburban housing production in this area.

²⁹ *Id.* at p. 20.

³⁰ Minn. Stat. 394.33 requires a Township's official controls to be consistent with and at least as restrictive as the County's official controls. There is no similar statute imposing such a requirement on a City's official controls.

³¹ Testimony of Dan Licht.

³² Ex. 4, p. 17.

D. The Present Transportation Network and Potential Transportation Issues, Including Proposed Highway Development.

Baldwin Township is well served by a network of State, County and Township roads. U.S. Highway 169 bisects the Township along a north-south axis providing convenient access to the Metropolitan Area.³³ The Township is served with no less than ten County Highways that form a minor arterial and collector road network to surrounding communities.³⁴

Baldwin Township has approximately 81 miles of roads, of which 80 miles are currently paved.³⁵ Baldwin maintains a network of Township collector roads that link its residential subdivisions and provide access to County Highways and U.S. 169.³⁶ The Township has scheduled major road reconstruction projects on five of its collector roads that will occur within the next few years.³⁷ These projects will be financed in large part with Municipal State Aid (“MSA”) funds that will be available only if the Township is incorporated as a City with a population of 5,000 or more.³⁸ Without MSA funding, these road projects will cause the Township’s tax rate to increase by approximately one-third.³⁹ If the Township is incorporated, the MSA funding will allow the Township to keep its tax rate at its current rate while it undertakes these major road reconstruction projects.⁴⁰

Baldwin Township is well served by U.S. Highway 169, its own network of roads and Sherburne County Highways. These roads are sufficient to serve the existing population and additional roads are planned as future growth dictates such road improvements, but incorporation of the Township is needed to assist Baldwin with the financial burden of maintaining such a

³³ Ex. 4, p. 27; testimony of Shane Nelson.

³⁴ Ex. 4, p. 27.

³⁵ Testimony of Bryan Lawrence and Shane Nelson, Ex. 1, p. 2.

³⁶ Ex. 4, at 29, Map 13.

³⁷ Testimony of Brian Lawrence and Shane Nelson.

³⁸ Testimony of Shane Nelson.

³⁹ Testimony of Todd Hagen.

⁴⁰ Id.

large amount of paved roads, which in turn are a product of the increasingly suburban nature of the Township.

E. Land Use Controls and Planning Presently Being Utilized in the Subject Area, Including Comprehensive Plans, Policies of the Metropolitan Council; and Whether There Are Inconsistencies Between Proposed Development and Existing Land Use Controls.

The Township is not within the Twin Cities Metropolitan Area and is, therefore, not subject to the jurisdiction of the Metropolitan Council.⁴¹ As noted above, Baldwin Township adopted a Comprehensive Plan in 2014 and adopted its own Zoning and Subdivision Ordinances in 2022. Since adopting its own Zoning and Subdivision Ordinances, the Township has been administering all zoning and subdivision controls within the Township, including site and building plans, conditional use permits, interim use permits, shoreland and floodplain management, subdivision control, State Building Code enforcement and subsurface sewage treatment systems.⁴²

Baldwin's land use ordinances require a minimum of 2.5 acres of land for any single-family residential lot, with a minimum of 40,000 square feet of buildable land for structures and the subsurface sewage treatment system.⁴³ In addition, a Certificate of Compliance is required for an existing subsurface sewage treatment system any time a building permit is issued for a property or if there is a property sale.⁴⁴ These controls ensure that continued suburbanization of Baldwin will occur in a manner that will protect the natural environment and the public health, safety and welfare.

⁴¹ Ex. 4, p. 30.

⁴² Id.

⁴³ Ex. 4, p. 31.

⁴⁴ Id.

There are no inconsistencies between Baldwin Township's current development controls and planned uses.⁴⁵ The proposed incorporation of Baldwin Township will have no impact on the community's existing land use controls except to free the Township from the constraints of Minn. Stat. § 394.33, which requires the Township's official controls to be consistent with and at least as restrictive as Sherburne County's official controls.⁴⁶ Incorporation will allow the City of Baldwin to independently engage in long-range planning and development control within the Township.⁴⁷ Further, Baldwin has engaged the services of a Town Engineer, Town Planner and Town Attorney to provide professional expertise in discharging all of its land use responsibilities.⁴⁸ In short, the Township has all of the planning and zoning infrastructure needed to operate as a fully functioning city under Minnesota Chapter 462.

Incorporation will also strengthen Baldwin's commitment to enforcing the State Building Code. Minn. Stat. § 326B.121, which prohibits cities over 2,500 in population that enforce the State Building Code from ceasing enforcement of the State Building Code, will require that the City of Baldwin continue to enforce the State Building Code so long as Minn. Stat. § 326B.121 remains law, thereby furthering the Legislature's expressed preference that the State Building Code be enforced in cities over 2,500 in population.

Baldwin has planned for the suburbanization of the community in a responsible and incremental manner consistent with its Comprehensive Plan. The Township's Comprehensive Plan more closely resembles the comprehensive plan of a city than a township, particularly given the amount of residential development it currently has and the amount of residential growth it envisions in the future.

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ Testimony of Joan Heinen.

F. Existing Levels of Governmental Services Being Provided to the Subject Area, Including Water and Sewer Service, Fire Rating and Protection, Law Enforcement, Street Improvements and Maintenance, Administrative Services, and Recreational Facilities and the Impact of the Proposed Action on the Delivery of the Services.

Baldwin Township currently provides for all necessary municipal services required by its residents and the entire Township.⁴⁹ The Township currently either directly provides or contracts for the provision of:

- Municipal Sanitary Sewer Service to the Frontier Trails subdivision
- Fire Protection
- Storm Water Management
- Street Maintenance
- Parks and Recreational Services
- Administrative Services
- Planning and Zoning enforcement
- Election Services
- Building Code Enforcement
- Assessing Services
- Auditing Services.⁵⁰

In addition, Police Services are currently provided by and upon incorporation will continue to be provided by the Sherburne County Sheriff.⁵¹ Other than increasing the City of Baldwin's independence in zoning matters, there was no evidence presented that indicates that incorporation will impact the delivery of the services currently being delivered by the Township.

⁴⁹ Ex. 4, p. 38 Ex. 3, p.8.

⁵⁰ Testimony of Bryan Lawrence and Joan Heinen.

⁵¹ Testimony of Sheriff Joel Brott.

The Township currently employs a number of full-time and part-time personnel in a variety of positions, including the following positions:⁵²

- Town Clerk/Treasurer
- Deputy Clerk
- Administrative Assistant
- Public Works Supervisor
- Public Works Maintenance Technician
- Seasonal staff (as needed)
- Fire Chief, Assistant Fire Chief and a full complement of fire fighters.

Incorporation will not increase the need to hire additional staff.⁵³

The Township has had its own fire department since 2003 and provides Fire and Emergency Medical services to all properties in both the Township and in Blue Hill Township through the 33 firefighters employed by the Township.⁵⁴ Its fire station is centrally located and provides easy and quick access to the entire Township when responding to emergency calls.⁵⁵ The Township has a Fire Department Capital Improvement Plan that anticipates the purchase of a new water tender and a new pumper truck in the next few years.⁵⁶ Together these vehicles will cost in excess of \$1,350,000.⁵⁷

⁵² Ex. 4 at 33.

⁵³ Ex. 4, p. 33.

⁵⁴ Testimony of Fire Chief Scott Case.

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ Ex. 3, p.10.

The Township has purchased 30 acres of land for a future administrative and fire hall building.⁵⁸ While the Township does not have a firm cost estimate for the building at this time, the cost is expected to be somewhere in the \$7 million to \$9 million range.⁵⁹

The provision of fire services by a Township is unusual, and is normally provided by cities rather townships. As noted from the planned future fire truck purchases and proposed new fire hall construction, operating a fire department is a complex, expensive operation that requires intricate planning and budgeting. Baldwin's Fire Department has excelled at the provision of emergency fire services to its residents, demonstrating its ability to master perhaps the most complex of tasks that a city its size will face, and further proving that Baldwin is ready, willing and able to transition from a township to a city.

Since 2016 the Township has maintained and operated a community sewer treatment system serving the Frontier Trails subdivision via a subordinate service district, providing sanitary sewer services to the residents of this subdivision.⁶⁰ In addition, the Township stands ready to step in and provide similar services to the Nordwall Estates subdivision should those residents need these services.⁶¹

For general governmental functions, the Township employs a Clerk-Treasurer and a Deputy Clerk. The Clerk-Treasurer helps prepare the budget, keeps financial records, keeps and maintains Township records, records and preserves meeting minutes, oversees elections, and is the main point of contract for the public.⁶²

⁵⁸ Id., p. 34.

⁵⁹ Testimony of Chief Case.

⁶⁰ Exhibit 4, p. 34; testimony of Jay Swanson and Bryan Lawrence.

⁶¹ Testimony of Jay Swanson.

⁶² Testimony of Joan Heinen; Exhibit 5, p 2.

The Township maintains a town hall, a fire hall, a public works facility and budgets for routine maintenance, Board of Supervisor activities, publication costs, legal, assessing, auditing, engineering and other administrative items.⁶³

The Township engages independent contractors for less routine administrative services as needed.⁶⁴ There is no anticipated growth in staffing costs for administration and governance due to incorporation.⁶⁵ Should Baldwin become a city, it is anticipated that Baldwin would retain a local attorney to handle criminal prosecution matters at an estimated cost of \$25,000 annually.⁶⁶

A primary service provided by the Township is maintenance of Township roads. Most of the roadways within the Township fall under the jurisdictional responsibility of either Sherburne County or Baldwin Township. The Township has responsibility to maintain all local streets and their connections with the minor arterials and collectors overseen by Sherburne County.⁶⁷ The Township currently budgets for street maintenance and park maintenance which are undertaken on an as-needed basis by the Township's public works department.⁶⁸ The Township also engages in annual capital improvement planning for an active street reconstruction and pavement management program designed to maintain these assets.⁶⁹ The Township primarily funds its road capital improvement program with local resources, with some partnership from Sherburne County which provides a modest amount of annual local road aid.

Incorporation will allow the City of Baldwin to receive MSA road funding, which is only available to cities with a population over 5,000.⁷⁰ With a population over 7,000 residents,

⁶³ Exhibit 3, p.8.

⁶⁴ Id.

⁶⁵ Id.

⁶⁶ Testimony of Bryan Lawrence.

⁶⁷ Testimony of Bryan Lawrence; Shane Nelson.

⁶⁸ Testimony of Bryan Lawrence.

⁶⁹ Testimony of Bryan Lawrence; Shane Nelson.

⁷⁰ Testimony of Shane Nelson.

Baldwin would qualify for MSA road funding in a net amount of \$461,127 upon incorporation.⁷¹ MSA road funding will allow the Township to issue a bond to reconstruct several collector streets over the next few years and pay that bond back in large part with MSA funds instead of entirely with tax levies.⁷² As a result, the Township can reconstruct the roads earlier than it would be able to without MSA funding, keep its tax levy relatively stable into the future, and fund millions of dollars in needed road repairs without excessively burdening its residents. This infusion of state MSA money into Baldwin solely because of the change of form of its governing structure to that of a City is perhaps the largest and most immediate benefit of incorporation, and is the strongest indicator that the Township form of government is no longer adequate to protect the health, safety and welfare of the public.

Baldwin Township currently relies on the Sherburne County Sheriff's Office to provide public safety police protection and 911 emergency response.⁷³ The Sherburne County Sheriff's Office is staffed with 86 sworn officers and employs a total of 308 staff.⁷⁴ The Sheriff's Office has 40 squad cars at its disposal, a mobile command center, armored vehicles, boats, three drones, ATVs, robots night vision goggles and thermal imagery equipment.⁷⁵ The Sheriff's Office has 19 criminal investigators, 6 drug task force members, a swat team, computer forensic personnel, a dedicated intelligence team and lab, dive team, canine units and emergency operations center, all of which are available when servicing Baldwin Township.⁷⁶ The Sheriff's Office can put 15 to 20 officers on a scene in Baldwin Township at any one time quickly if the need arises.⁷⁷ Contrary to the assertions of the witnesses of the City of Princeton, Sheriff Brott

⁷¹ Exhibit 3, p. 16.

⁷² Testimony of Todd Hagen.

⁷³ Testimony of Sheriff Joel Brott.

⁷⁴ Id.

⁷⁵ Id.

⁷⁶ Id.

⁷⁷ Id.

confirmed that incorporation will not change the police services that the Sherburne County Sheriff's Office provides to the Township, nor will the City of Baldwin have to contract with the Sheriff's Office to maintain its current level of policing services.⁷⁸

Incorporation will not change the quality, quantity, or scope of any of the services currently provided to the Township.⁷⁹ However, as noted by Mr. Hagen, incorporation will allow the Township to move up the timeline for the reconstruction of several Township collector roads with the aid of MSA funding and will allow the Township to undertake these projects without significantly increasing the City of Baldwin's tax rate.⁸⁰ In addition, incorporation will provide the Township with additional economic development powers, including tax increment financing ("TIF") authority which is commonly used by cities as an economic development tool to help bring industrial development to a city.⁸¹

Finally, as noted by Mr. Swanson, Mr. Hagen and Mr. Licht, incorporation will solidify the Township's tax base, giving the newly-incorporated city the certainty that its tax base will remain in the city from one year to the next.⁸² This fiscal certainty will allow the Township to make long-term investments to improve its services that it has been hesitant to undertake (such as the issuance of a multi-million dollar bond to fund road improvements) for fear that annexation of its tax base will result in a severe financial hardship on the property remaining in a post-annexation Township. Incorporation will also preserve the necessary resources to provide the services more economically.

⁷⁸ Id.

⁷⁹ Ex. 3 at 33.

⁸⁰ Testimony of Todd Hagen.

⁸¹ Id.

⁸² Testimony of Jay Swanson, Todd Hagen and Dan Licht.

The breadth of municipal services provided by the Township reflect the level of suburbanization that has occurred in the Township.⁸³ Demand for the Township's services is expected to grow as its population grows. The Township form of government handicaps the Township in its ability to make the substantial, long-term investments in infrastructure necessary to deliver cost-effective services to its residents. As additional services are provided, the need for city powers to deliver these services effectively and efficiently will continue to increase. Incorporation will facilitate economic and efficient delivery of these services.⁸⁴ Incorporation will only protect and enhance the future adequacy of services required to protect the public health, safety, and welfare of Baldwin's residents.

G. Existing or Potential Environmental Problems and Whether the Proposed Action is Likely to Improve or Resolve these Problems.

No evidence was introduced at trial identifying any known environmental problems in the Township which bear on the incorporation analysis.

H. Fiscal Impact on the Subject Area and Adjacent Units of Local Government, Including Present Bonded Indebtedness; Local Tax Rates of the County, School District, and Other Governmental Units, Including, Where Applicable, the Net Tax Capacity of Platted and Unplatted Lands and the Division of Homestead and Non-homestead Property; And Other Tax and Governmental Aid Issues.

Mr. Todd Hagen, the Township's municipal fiscal consultant, opined that Baldwin Township is financially strong and has a history of stable and steady financial management.⁸⁵ According to Mr. Hagen, the Township currently manages the administration of its finances in a manner that is in line with the financial operations of cities.⁸⁶ In particular, the Township issues general obligation debt, oversees debt administration, engages in budgeting and long-range

⁸³ Testimony of Bryan Lawrence

⁸⁴ Exhibit 4, p.38.

⁸⁵ Ex. 3 at 11; Test. of Todd Hagan.

⁸⁶ Test. of Todd Hagan.

financial planning, and prepares a consolidated annual financial report with audited financial statements.⁸⁷

Mr. Hagen testified that incorporation will initially increase the Township's net annual revenues by \$461,127 in MSA funding in 2025 with a further increase of \$210,000 in Local Government Aid ("LGA") if City of Baldwin is able to obtain special legislation similar to that obtained by the City of Rice Lake after it incorporated in 2015, resulting in an annual increase in revenues post-incorporation of \$671,127 by the year 2026.⁸⁸ One-half of that \$210,000 in LGA will be designated to purchase a new fire truck.⁸⁹

City of Baldwin expenditures will increase by approximately \$25,000 for prosecution expenses upon incorporation, for a net annual gain of \$646,127 as the City of Baldwin compared to its current status as Baldwin Township.⁹⁰ The additional \$646,127 that will accrue annually to the Township by virtue of incorporation amounts to 55% of the entire Township levy for 2023.⁹¹

A net increase equal to 55% of the Township's 2023 tax levy in the form of additional state aids dramatically illustrates the debilitating effect the Township's current form of government has on the Township's finances, which in turn hinders the Township from providing better and safer roads to its residents and additional fire equipment for its residents' protection. In addition, Fire Chief Case testified that had the Township been a City in 2023, it would have received an additional \$300,000 in public safety state aid, which was not available to Baldwin because it was a Township.⁹² There is no better evidence that the Township form of government is no longer sufficient to adequately protect the health, safety and welfare of the Township than

⁸⁷ Id.; Ex. 3 at 11.

⁸⁸ Testimony of Todd Hagen; Ex. 3, pp. 16-17.

⁸⁹ Ex. 3, p. 15.

⁹⁰ Testimony of Todd Hagen; Ex. 3, pp. 16-17; 25.

⁹¹ Ex. 3, p. 5.

⁹² Testimony of Scott Case.

the fact that had Baldwin been a City, it would have received approximately \$946,000 in additional state aids in 2023 that could have been used to improve the Township's roads and purchase new fire equipment. Incorporation of the Township via this proceeding will have a direct and positive impact on the City of Baldwin's ability to better protect the health, safety and welfare of its residents.

Although the Township's financial operations mirror those of cities, it has a lower tax rate than all of the cities surrounding it and a lower tax rate than all but one of the Townships surrounding it.⁹³ Incorporation will solidify the Township's borders and existing tax base, thereby preserving the Township's lower tax rate into the foreseeable future.⁹⁴ Conversely, the failure to incorporate the City of Baldwin will result in Baldwin Township's tax rate increasing from its projected 2024 rate of 13.85% to 20% as the Township will not qualify for \$646,127 in MSA and LGA money from the State that would be available to the City of Baldwin.⁹⁵

The Township had bonded indebtedness of \$720,000 as of February 2, 2024, which Mr. Hagen characterized as a very low level of debt.⁹⁶ Mr. Hagen testified that the Township anticipates it will need to incur future debt to finance the reconstruction of a number of roads, new fire equipment, and a new fire hall.⁹⁷ Incorporation would help ensure that the Township would have a stable tax base, free from concerns that properties within the Township will be annexed by adjacent municipalities, thereby reducing its tax base.⁹⁸ Such stability will allow the Township to better manage its debt and to fund future capital improvements.⁹⁹

⁹³ Ex. 3, p. 26.

⁹⁴ Ex. 3, p. 26.

⁹⁵ Ex. 3, p. 35-36.

⁹⁶ Ex. 3, p. 27; testimony of Todd Hagen..

⁹⁷ Testimony of Todd Hagen.

⁹⁸ Id.

⁹⁹ Id.

Incorporation is the only procedure which can provide the stable borders required to enable to the Township to make the long-term investments in infrastructure and equipment its residents will need in the near future.

I. Relationship and Effect of the Proposed Action on Affected and Adjacent School Districts and Communities.

Baldwin Township is served by two different school districts: Princeton Public School District (ISD 477) and Elk River-Otsego-Rogers-Zimmerman School District (ISD 728).¹⁰⁰ School district boundaries overlay and transcend municipal boundaries.

Incorporation is not expected to have an immediate impact upon the tax capacity, tax rate, or credit ratings of Sherburne County or the two school districts that serve the Township, although additional growth in Baldwin's tax base as a City may result in a marginal benefit to Sherburne County and the school districts over time.¹⁰¹

The Townships of Greenbush, Orrock, Princeton, Blue Hill, Livonia, and Spencer Brook have all approved resolutions supporting the incorporation of Baldwin Township.¹⁰² These resolutions are a strong indication that the incorporation of Baldwin as a City will have no detrimental effect on these Townships. None of the other Townships that abut Baldwin Township or touch a corner of the Township have taken any action bearing on Baldwin's incorporation petition, which indicates that the incorporation does not affect them in any material way. The impact of incorporation on the City of Princeton will be addressed in Section K below.

J. Whether Delivery of Services to the Subject Area Can Be Adequately and Economically Delivered by the Existing Government.

¹⁰⁰ Ex. 4, p. 36.

¹⁰¹ Ex. 3, pp. 28-29.

¹⁰² Exhibit 14.

While the Township is currently delivering cost-effective services to the residents of the Township, a change in the form of government from township to city would allow the Township to deliver the services more economically than it is currently providing. This would be done in several ways.

First, incorporation would centralize decision making authority in an elected City Council with statutory terms of office of four years for council members and two years for the mayor (see Minn. Stat. § 412.02). Compared to the current split authority with the Town Board making most of the day-to-day decisions and approving the budget and the Township's electorate that shows up at the annual meeting approving the levy, the city form of government will enable the City Council to better plan for and fund big-ticket expenditures over several years, resulting in more consistent delivery of services to the City's residents.

Second, incorporation will solidify the Township's tax base, from which it derives the vast majority of its operating funds. Incorporation will prevent the wholesale annexation of a significant portion of the Township's tax base by a neighboring city such as Princeton (concurrent detachment/annexations must be petitioned for by the property owners under Minn. Stat. § 414.061 and are relatively rare compared to annexations), thus making it easier for the City of Baldwin to commit to long term, big-ticket investments such as a new fire hall and fire trucks to better serve its residents.

Third, incorporation will increase state aids by up to \$646,127 in MSA and LGA funding that would be available to the City of Baldwin to reconstruct roads, purchase new fire equipment and construct a newer and larger fire hall, all of which will enhance the City of Baldwin's ability to deliver needed services to its residents.

Finally, Incorporation will also allow the City of Baldwin to use TIF authority that is currently available to cities, and not to towns, to incentivize industrial investment in the newly incorporated city, thus enlarging its tax base.¹⁰³ Incorporation would allow the Township access to TIF to supplement planning efforts and attract quality business development to the community, which in turn will diversify the City of Baldwin's tax base, further stabilizing its tax rate.

K. Analysis of Whether Necessary Governmental Services Can Best Be Provided Through the Proposed Action or Another Type of Boundary Adjustment.

Virtually all of the evidence in the record addressing service delivery indicates that Baldwin Township can best deliver the necessary governmental services to its residents. The Township currently either directly provides or contracts for the provision of all of the governmental services needed by its residents. This service delivery would only be enhanced by incorporation as the City of Baldwin would receive additional state aids that amount to approximately 55% of its 2023 tax levy.

As addressed in detail above, the Township is a suburban township currently operating in a manner similar to a city.¹⁰⁴ It furnishes most of the services of a city, including sanitary sewer, fire protection, street improvement and maintenance, administrative services, and parks and recreation services. It has staff and receives professional services via contracts.¹⁰⁵ It has adopted a Comprehensive Plan and administers its own Zoning and Subdivision Ordinances. It prepares and administers its budget. Incorporation will increase the Township's financial stability by providing certainty about its tax base, greater certainty regarding the adoption of the annual levy, and access to economic development tools such as TIF.

¹⁰³ Ex. 3, pp. 31-32.

¹⁰⁴ Id., p. 4.

¹⁰⁵ Test. of Bryan Lawrence.

While the City of Princeton did not enter this proceeding as a party, it did present evidence that purported to show that Princeton could better serve the approximately 9,200 acres of Baldwin Township that Princeton illustrated on Exhibit 101, its “desired annexation area” (hereafter “Desired Annexation Area”). However, the evidence presented by Princeton failed to demonstrate that Princeton could better serve any portion of this area, as shown by the service-by-service comparison below:

1. Sanitary Sewer and Municipal Water Service.

The evidence at trial demonstrated that there were no failing septic systems or wells within the Desired Annexation Area, and that septic systems and wells continue to meet the needs of the residents of the entire Township.¹⁰⁶ While Princeton’s Comprehensive Sanitary Sewer Plan (Exhibit 28) called for providing sanitary sewer service to all of the subdivisions within the Desired Annexation Area, the total cost of fulfilling the four phases of that plan was estimated to cost \$104,873,000 just to expand the wastewater treatment plant and install the sanitary sewer trunk mains.¹⁰⁷ An additional \$30 to \$50 million would be needed to install and support trunk water improvements to the Desired Annexation Area.¹⁰⁸ Extending lateral sewer and water lines to just the 909 homes in the Desired Annexation Area would cost an additional \$82,864,500, of which very little of that amount would be recoverable via special assessments that the City would need to impose to try to recover these costs from the owners of these 909 properties.¹⁰⁹ Even Princeton’s own engineer testified on direct examination that it was not cost

¹⁰⁶ Testimony of Bryan Lawrence and Shane Nelson.

¹⁰⁷ Testimony of Shane Nelson.

¹⁰⁸ Id.

¹⁰⁹ Testimony of Shane Nelson and Ethan Waytas.

effective to extend sewer and water service to the 909 homes within the Desired Annexation Area.¹¹⁰

The total estimated cost to build out Princeton's utility system to the point that it could serve the Desired Annexation Area was approximately \$227 million, all to serve the owners of these properties with a service that is neither needed nor desired. Further, Princeton failed to introduce any evidence to show how a City its size, with approximately \$15 million in existing sanitary sewer debt, would service a 15-fold increase in its debt that would be required to extend utilities to the area shown in its Comprehensive Sanitary Sewer Plan. Princeton failed to introduce that evidence because, as Mr. Hagen noted, Princeton does not have the capacity to fund improvements on such a massive scale as envisioned by its Sewer Plan.¹¹¹

Mr. Licht's analysis demonstrated that Princeton's Comprehensive Sewer Plan would take approximately 10,000 years to implement based on Princeton's current land absorption rate.¹¹² To put that in perspective, the oldest Egyptian pyramids have only been in existence for about 4,700 years. Princeton's sewer plan purports to plan for a sewer system that will take more than twice that amount of time to complete. As Mr. Licht noted in his testimony, while all of the municipalities in the Metropolitan Area employ a 20-year planning window because plans going beyond 20 years in the future are too unpredictable, Princeton employs a 10,000 year planning window.

The unreliability of Princeton's plan after only four years has been shown by the testimony of Princeton's engineer who stated that the City does not need to follow the phasing sequence of its Comprehensive Sewer Plan, which the City would have to change if it had any

¹¹⁰ Testimony of Jennifer Edison.

¹¹¹ Testimony of Todd Hagen.

¹¹² Testimony of Dan Licht.

hope of serving the Desired Annexation Area anytime within the next 5,000 years. If Princeton's plan can't even be followed after only four years, why would anyone believe that it can be followed for the 10,000 years necessary to fully implement it? The hard truth is that Princeton has no workable plan to provide sewer and water service to the Desired Annexation Area, nor do any of the properties in the Desired Annexation Area need it.

Finally, Princeton's "Evidentiary Testimony" statement that accompanied its trial exhibits states at pages 5 and 6 that:

Princeton's wastewater treatment plant was expanded in 2014/15 to ensure it was able to treat the wastewater from the entire City as well as all of the properties in the sewer service area identified in Exhibit 101. The plant has an overall design capacity of 1.635 million gallons per day of average flow, and the plant is currently running at approximately twenty- five percent capacity, or 420,000 gallons per day. The City financed the project by issuing GO Sewer Revenue Bonds totaling \$15,118,000 which will be fully paid in 2053. *If the City is unable to expand its boundaries in the future sewer service area, the financial burden of the entire wastewater treatment facility expansion will be borne by current City residents and businesses, and the full, efficient use of the facility will not be attainable.* [Emphasis added.]

This statement is directly contrary to what is stated in Princeton's Comprehensive Sewer Plan, which clearly demonstrates that the existing wastewater treatment sewer plant capacity will be used up in phases 1 and 2, which are located *exclusively within the existing City of Princeton and Princeton Township*, and that the wastewater treatment plant will have to be expanded with the implementation of phase 3, the first phase to serve any portion of the Desired Annexation Area.¹¹³ If Princeton actually believed its own Comprehensive Sewer Plan, it could not make such a statement, proving that even Princeton does not believe its own Comprehensive Sewer Plan. Princeton's 10,000-year Sewer Plan has been so thoroughly discredited, even by the City itself, that it is now clear that the City has no plan to provide sewer or water service to any of the properties in the Desired Annexation Area.

¹¹³ Testimony of Shane Nelson.

Given the outrageous cost of extending utilities to the Desired Annexation Area, the fact that the properties in this area do not need such services, and the fact that Princeton has no realistic plan to extend such services, the use of septic systems and wells remain the most economical and practical method of meeting the water and wastewater needs of the residents of the Desired Annexation Area.

2. Emergency Fire Services.

While both Princeton and Baldwin have fire departments, Princeton's fire department is in total disarray. In December, 2023, 33 of 36 fire fighters approved a vote of no confidence in the Fire Chief after months of the Fire Chief ignoring serious safety defects with the City's fire equipment.¹¹⁴

When this vote of no confidence was submitted to the City Council, City Administrator Michelle McPherson sent a demeaning letter to the firefighters telling them that they needed to follow the "chain of command" which required them to take their complaints to the City's Fire Chief, the very person that the firefighters had taken their complaints to for the past year with no progress on any of the issues identified.¹¹⁵ Essentially, Ms. McPherson was telling the firefighters that the City Council was going to take no action on the safety deficiencies they identified.

It was not until approximately 20 firefighters threatened to quit the Fire Department that the City Council began to engage on this issue.¹¹⁶ This entire saga illustrates a total failure of leadership from the City Council to the City Administrator and the Fire Chief on a critical safety issue within what is one of the City's most important life-safety functions.

¹¹⁴ Exhibit 22; testimony of Fire Chief Scott Case.

¹¹⁵ Exhibit 64.

¹¹⁶ Testimony of Fire Chief Scott Case.

Contrast this to the Baldwin Fire Department, which has been under the steady leadership of Fire Chief Scott Case, a 30-year veteran firefighter and a former District Fire Chief of the St. Paul Fire Department. Mr. Case testified that Baldwin can respond to fires in the Desired Annexation Area 4 to 5 minutes quicker than Princeton can, both because Baldwin's Fire Hall is closer and more centrally located to the properties in the Desired Annexation Area and because Baldwin's page out comes directly from Sherburne County Dispatch and does not need to go from Sherburne County Dispatch to Mille Lacs County Dispatch before the page out occurs.¹¹⁷

A four minute delay in responding to a structure fire means that a 100 square foot fire will be a 1,600 square foot fire after four minutes, which is the difference between a small kitchen fire and one that engulfs an entire floor or the entire home.¹¹⁸ Even without the enormous turmoil that has engulfed Princeton's Fire Department, there is no situation in which it can provide an equal fire response to the Desired Annexation Area than Baldwin can, much less a faster or better response.

In addition, assuming the Desired Annexation Area were to ultimately be annexed to Princeton, that would leave the Baldwin fire station at the very edge of the City of Baldwin, with homes and churches that are no more than a stone's throw away from the existing Baldwin fire station being serviced by Princeton's fire station that is much farther away.¹¹⁹ Notably, the City of Princeton provided no evidence to refute any of the facts presented by Baldwin regarding Princeton's response times to the Desired Annexation Area.

3. Law Enforcement Services.

¹¹⁷ Id.

¹¹⁸ Id.

¹¹⁹ Id.

As noted above, the Sherburne County Sheriff's Office is staffed with 86 sworn officers and employs a total of 308 staff. The City of Princeton only has 12 sworn officers.¹²⁰ The Sheriff's Office can put 15 to 20 officers on a scene in Baldwin Township at any one time quickly if the need arises, which is more officers than are on the entire Princeton police force. The Sheriff's Office has 40 squad cars at its disposal, a mobile command center, armored vehicles, boats, three drones, ATVs, robots, night vision goggles and thermal imagery equipment. The Sheriff's Office has 19 criminal investigators, 6 drug task force members, a SWAT team, computer forensic personnel, a dedicated intelligence team and lab, a dive team, canine units and an emergency operations center, all of which are available when servicing Baldwin Township.

Princeton currently has only 12 officers on its force, even though it should have 15.¹²¹ By its own admission, the Princeton police force is already 20% short of the level that it should be staffed at. Currently, this short policing staff patrols 3,374 acres that are within the City limits.¹²² Expanding the City's boundaries by 9,200 acres (the acreage of the Desired Annexation Area) would nearly quadruple the area of the City and would effectively reduce the number of officers per square mile within the City by a factor of nearly four.

If the proposed annexation were granted, Princeton's "solution" appears to be to hire 2 additional officers,¹²³ but that would not even bring the City up to normal complement of 15 sworn officers. The City presented no plan on how it would bring its sworn officer staff back to normal levels for its existing City patrol area, and completely failed to demonstrate how it would address the additional staffing needed to provide police service to a City nearly four times its

¹²⁰ Testimony of Michelle McPherson.

¹²¹ Testimony of Michelle McPherson.

¹²² Ex. 4, Appendix A, p. 2, Table A.

¹²³ Testimony of Michelle McPherson.

current size. Under this scenario, annexation would inevitably result an overall degradation of police response to the Desired Annexation Area, with fewer officers available, less equipment available, and fewer specialized police units available.

4. **Property Taxes.**

It is undisputed that Princeton's preliminary 2024 tax capacity rate (property tax rate) stands at 55% to 56%, while Baldwin Township's rate stands at 13.85%, less than one-quarter of Princeton's rate.¹²⁴ The tax analysis performed by Ehlers demonstrated that the local tax rate for those properties in the Desired Annexation Area would increase upon annexation by 333%. A commercial or industrial property paying \$3,512 to the Township would pay \$15,222 to the City upon annexation, an increase of \$11,710 for no additional services than the property receives today.¹²⁵ A residential property paying \$477 to the Township would pay \$2,067 to the City upon annexation, an increase of \$1,590 for no additional services than the property receives today from Baldwin.¹²⁶

While the City Administrator testified that the taxes on residential properties would only rise slightly because of the City's Rural/Urban taxing district ordinance, that testimony is contrary to Minnesota law as set forth in Minn. Stat. § 272.67, the statute that authorizes a city to establish a rural/urban taxing district. Minn. Stat. § 272.67, Subd. 8 requires that any platted parcels to which street improvements have been extended *shall* be transferred from the rural district to the urban district. As noted above, Mr. Licht testified that the vast majority of the 909 residential properties in the Desired Annexation Area are platted, and Supervisor Lawrence testified that 80 of the 81 miles of Township roads have been improved with pavement. These

¹²⁴ Ex. 3, p. 26.

¹²⁵ Ex. 3, pp. 36-37.

¹²⁶ Id.

facts will, by law, and regardless of how Princeton's ordinance language reads, require virtually all of the residential lots be taxed at the urban rate, which will raise the local tax rate for these annexed residences by 333%.

Unfortunately, the City Administrator's representations on this issue to this Court and to the public at the public comment portion of the hearing are factually and legally incorrect. The vast majority of the properties in the Desired Annexation Area would be taxed at the urban tax rate, resulting in a 333% increase in the local tax burden to be borne by the annexed properties. Annexation of the residential, commercial and industrial properties in the Desired Annexation Area will result in millions of additional dollars of local taxes being extracted from these properties while these same properties will suffer from inferior emergency fire and police services for the increased taxes they will pay.

5. Road Maintenance.

Baldwin currently has 7 plow trucks to plow its 81 miles of roads, with another brand new plow truck expected to be delivered in spring, 2024.¹²⁷ Princeton has 3 plow trucks, 2 of which are the smaller, single axle plow trucks.¹²⁸ Given that Princeton would be annexing about one-third of the Township's acreage, it would likely need to add one-third of the 8 plow trucks that the Township will have in 2024, which would require Princeton to double its plow truck fleet. Princeton offered no evidence on whether or when it would acquire these additional plow trucks, or how it would finance these new purchases. Without such information in evidence, the Court can only assume that Princeton would not have the equipment needed to adequately plow

¹²⁷ Testimony of Jay Swanson.

¹²⁸ Testimony of Bob Gerald.

the streets in the Desired Annexation Area. By contrast, with its new snow plow truck, Baldwin estimates that it can plow all 81 miles of its roadways in approximately 8 hours.¹²⁹

Baldwin also has plans to spend several million dollars to improve several collector roads in the Township, including 305th Street, 100th Street, 116th Street, 297th Street and 136th Street in the next few years.¹³⁰ Several of these roads are located in the Desired Annexation Area.¹³¹

Those road improvements will commence in 2025 according to the financing plan the Township has already put in place.¹³² Princeton presented no evidence of when or even if it would repair these roads, or if anyone in the Princeton City Administration even knows that these roads need to be rebuilt.

6. Other Services.

Princeton introduced no substantial evidence to demonstrate that it could better serve the Desired Annexation Area on a host of other services that Baldwin currently offers its residents, including planning and zoning administration, subdivision control, building inspection services, parks and recreation, State Building Code enforcement and subsurface sewage treatment systems.

Contrast this to evidence presented by Baldwin, including the following:

- All new land use ordinances were adopted in 2022.¹³³
- The Township will be expanding the park facilities in Young Park.¹³⁴ Young park is an 80-acre park that is within the Desired Annexation Area.¹³⁵

¹²⁹ Testimony of Jay Swanson

¹³⁰ Testimony of Bryan Lawrence.

¹³¹ Testimony of Bryan Lawrence and Shane Nelson.

¹³² Ex. 3, p. 16.

¹³³ Testimony of Dan Licht.

¹³⁴ Ex. 4, Appendix A, p.9.

¹³⁵ Testimony of Dan Licht; Ex. 4, Appendix A, p.9.

- The Township provides stormwater management services.¹³⁶
- The Township issues building permits under the State Building Code.¹³⁷
- The Township provides septic inspection services.¹³⁸
- The Township provides all services that are needed by the Township's residents.¹³⁹

There is no evidence in the record to demonstrate that governmental services could best be delivered by another type of boundary adjustment other than incorporation of the Township. Princeton has failed to introduce evidence that it can provide better services than Baldwin is providing in even one category of service delivery, much less in a majority of categories. In the all-important life-safety services of emergency fire response and police services, the evidence overwhelmingly demonstrates that the Township can better serve the Desired Annexation Area than can Princeton.

Even if Princeton was found to be providing one service better than the Township can, that service comes at the cost of a 333% tax rate increase for the annexed property owners. Princeton introduced no evidence of any service it provides that would justify such a punishing tax increase to those properties it seeks to annex. The evidence presented clearly indicates that incorporation is the best means of providing the highest level and most efficient delivery of services within the Desired Annexation Area.

7. Outstanding Debt Levels.

¹³⁶ Ex. 4, p. 35.

¹³⁷ Testimony of Dan Licht.

¹³⁸ Ex. 4, p. 2.

¹³⁹ Ex. 4, p. 38.

Baldwin's total debt per capita in 2024 stands at \$102.¹⁴⁰ The City of Princeton's total debt per capita in 2024 stands at \$3,123,¹⁴¹ more than 30 times Baldwin's per capita debt level. Municipalities with higher debt loads are highly leveraged and have less financial capacity and flexibility than those with lower debt loads.¹⁴² With a per capita debt load of only 1/30th of Princeton's debt load, Baldwin has far greater financial flexibility to achieve its goals and handle unexpected emergencies in service delivery than does Princeton.

L. Degree of Contiguity of the Boundaries of the Subject Area and Adjacent Units of Local Government.

Baldwin Township was organized in 1850 including all of the territory that is now Baldwin, Blue Hill and Santiago Townships.¹⁴³ In 1877 the Township was reorganized and reduced in size to 36 square miles.¹⁴⁴ The west, south and east boundaries of the Township have remained the same since Baldwin was founded.¹⁴⁵ The northern boundary with the City of Princeton has changed over the years as a result of piecemeal annexations.¹⁴⁶ The annexations from Baldwin Township constitute less than one-quarter of Princeton's entire land area.¹⁴⁷

The current boundary between the City of Princeton and Baldwin is fairly well defined with the largest exception being a 100-foot wide former railroad right-of-way currently being used as a trail. However, because the trail is too narrow to be used for anything but a trail, it will have no practical effect on the operation of the City of Baldwin.

¹⁴⁰ Ex. 3 at 23.

¹⁴¹ Id.

¹⁴² Ex. 3 at 22.

¹⁴³ Ex. 4, p. 40.

¹⁴⁴ Id.

¹⁴⁵ Id.

¹⁴⁶ Id.

¹⁴⁷ Ex. 4, Appendix A, p. 2.

There is no boundary adjustment possible that will improve the contiguity of the current boundaries of Baldwin Township and its neighbors.¹⁴⁸ Incorporation will serve to maintain and preserve the contiguity of the current boundary of Baldwin, which is in the best interest of the entire community and will protect the public health, safety, and welfare.¹⁴⁹

M. Analysis of the Applicability of the State Building Code.

Baldwin Township adopted the State Building Code by reference in 2022.¹⁵⁰ The Township contracts with a Building Official to administer the State Building Code throughout the entire community.¹⁵¹ No other boundary adjustment will improve the enforcement of the State Building Code currently provided by Baldwin Township.¹⁵²

II. Written Comments Submitted by the Public.

Approximately 190 written comments from the public were submitted to this Court, most appearing to be submitted by Township residents or property owners. None of the commenters asked that their properties be annexed to the City of Princeton, and the strong majority of those submitting comments were in favor of incorporating the Township. The Township believes that the comments received are representative of the opinions of the Township residents as a whole and demonstrate that the Township's residents are ready for the Township to transition to a City.

III. The Evidence in the Record Overwhelmingly Demonstrates that Baldwin Township is Currently Suburban in Character.

Foremost among the evidence establishing the Township's suburban character are the following:

¹⁴⁸ Ex. 4 at 40.

¹⁴⁹ Id.

¹⁵⁰ Id.

¹⁵¹ Id.

¹⁵² Id.

1. The Township had a population of 7,043 residents in 2022 and 2,531 households in 2020.¹⁵³
2. Baldwin is the 3rd most populous Township in Minnesota.¹⁵⁴
3. Baldwin's population grew 53.7% between 2000 and 2020.¹⁵⁵
4. The number of Baldwin's households grew 62.7% between 2000 and 2020.¹⁵⁶
5. If incorporated, Baldwin would have a higher population than over 721 existing cities in Minnesota (based on 2022 population estimates), placing it in the 84th percentile of all cities in Minnesota ranked by population.¹⁵⁷

These facts clearly demonstrate Baldwin's transition from a rural Township to a full-fledged suburb on the edge of the Metropolitan Area. Its projected population growth indicates that this suburbanization trend will continue over the next 20 years as its population is projected to increase from 7,104 in 2022 to 8,762 in 2040.¹⁵⁸ Baldwin Township's existing population and the fact that it already has its own fire department, is providing sanitary sewer services where necessary, and operates an extensive public works department are consistent with the conclusion that the Township is currently suburban and character and already functioning as a city rather than a township.

IV. The Township Form of Government Is Not Adequate to Protect the Public Health, Safety and Welfare.

A. Statutory Limitations on the Township's Powers Reduce the Township's Ability to Adequately Protect the Public Health, Safety and Welfare.

While the Township form of government may work fine for governing sparsely populated farming areas, statutory limitations in State law restrict Baldwin Township's ability to adequately protect the public. Perhaps the most obvious area where the limitations of the Township form of government are felt is in Baldwin Township's inability as a Township to

¹⁵³ Ex. 4 at pp. 7-8.

¹⁵⁴ Ex. 4 at 7.

¹⁵⁵ Ex. 4 at 6, Table 1.

¹⁵⁶ Ex. 4 at 8, Table 2.

¹⁵⁷ Ex. 4 at 7.

¹⁵⁸ Ex. 4, at 9, Table 3.

qualify for \$461,127 in MSA funds, \$210,000 in Local Government Aid, and the fact that it was unable to receive \$300,000 in one time public safety aid in 2023 that it would have received had it been a city in 2023. If incorporated, the Township plans to use these monies to reconstruct roads and purchase fire equipment, which in turn will help to protect the public health, safety and welfare. Baldwin's ability to protect the health, safety and welfare of its residents will be reduced if it remains as a Township.

Incorporation will also enable the City of Baldwin to ensure that its budget matches its tax levy in any given year. For 2024, Baldwin's Town Board approved a Township budget of \$1,878,716.¹⁵⁹ In order to fund the budget, the Township's electorate that shows up at its 2024 Annual Meeting in March must vote the amount of the Township's tax levy.

At the Annual Meeting, the Town Board presents a budget to the electors for their consideration.¹⁶⁰ The electors review the budget and vote directly on the amount the Township may levy upon the property in the Township to fund the budget.¹⁶¹ The Township may not levy more than the Town electors approve at the annual meeting. (See Minn. Stat. § 365.431) In addition, state statutes give specific spending authority to the Town electors. For example, Minn. Stat. § 365.15 authorizes the Town electors to set the amount of money to be raised for police and fire protection, thus preempting the Town Board from deciding how much money should be spent on these vital operations.

While this arrangement works well for less developed townships, these statutory restrictions have the potential to unnecessarily hinder the Township's ability to adequately protect the public health, safety and welfare. While the Town Board may spend weeks preparing

¹⁵⁹ Exhibit 7, p. 24.

¹⁶⁰ Testimony of Bryan Lawrence and Joan Heinen.

¹⁶¹ Id.

a budget, including capital project budgets, the electors spend about 2 hours considering the budget before voting on it.¹⁶² Typically, only about 30 to 40 electors show up for the annual meeting, meaning that the tax levy for the entire Township is decided by less than 1% of the Township's population.

This cursory review by whichever electors happen to show up in any given year provides no assurance that long term capital commitments (such as road projects and new fire equipment) will be carried through from year to year. The Township needs certainty that its major planned expenditures will be consistently funded from year to year in order to properly provide for the safety of its residents. This certainty can best be provided by a city council under the city form of government, where the city council approves both the budget and the annual tax levy rather than a handful of electors under the township form of government.

B. Incorporation Will Solidify the Township's Borders, Protecting Valuable Tax Base from Loss Through Annexation.

Under Minnesota Statutes Chapter 414, the Township's neighboring city, Princeton, can annex large swaths of property from the Township, which in turn would significantly reduce the Township's tax base. In fact, the City of Princeton is asking this Court to do exactly that in this proceeding. Under Minn. Stat. § 414.031, a neighboring city can initiate an annexation proceeding for an unlimited amount of acreage simply by passing a resolution, serving it on the Township it wishes to annex, and filing it with the Office of Administrative Hearings.¹⁶³

Annexation of a significant portion of the Township's tax base and population in this manner may impair the Township's ability to deliver essential long-term services, such as fire

¹⁶² Id.

¹⁶³ Minn. Stat. § 414.031; Note that in this proceeding the City of Princeton failed to pass and file a resolution to annex the Desired Annexation Area, and therefore this Court is precluded from annexing property from the Township to the City of Princeton in this proceeding.

protection or road maintenance services to its residents, thus endangering the health, safety and welfare of the remaining Township residents. For example, if the City of Princeton had filed an annexation petition for the Desired Annexation Area and if this Court were to grant such a petition, the incorporated City of Baldwin would have a population of less than 5,000 people and would not be eligible for the net \$461,127 in MSA funding.¹⁶⁴ In addition, it would lose \$140,000 of its projected \$210,000 in LGA. This would be in addition to its loss of tax base. And because the City can file an annexation petition at a time of its choosing, the Township has no way to plan for such a sudden and catastrophic revenue loss.

Upon the incorporation of the City of Baldwin, a neighboring city can only annex property with the consent of the property owner to be annexed and upon the issuance of a decision of this Court after a contested case hearing, and then only on an abutting-property-by-abutting-property basis rather than in broad swaths as may be done when annexing land from a Township.¹⁶⁵ Stabilizing the borders in this manner would allow the City of Baldwin to continue to provide, plan for and fund significant public-safety related expenditures such as road improvements, fire equipment, and a new fire hall without abrupt interruption of the funding sources of these public safety expenditures.

The benefits from stabilizing a Township's borders have been well recognized by the Office of Administrative Hearings in previous incorporation proceedings, including those of the City of Ventura (now St. Augusta), the City of Columbus, the City of Nowthen, the City of Credit River and the City of Empire. Baldwin requests that the Court take judicial notice of the following: Finding no. 95, p. 19, Findings of Fact, Conclusions of Law, and Order, *In re the Petition of St. Augusta Township for Incorporation (City of Neenah, I-65)/In re the Petition for*

¹⁶⁴ Testimony of Dan Licht.

¹⁶⁵ See Minn. Stat. § 414.061 for concurrent detachment and annexation procedures.

Annexation of Unincorporated Adjoining Territory to the City of St. Cloud (Schilplin A-6107)/In re the Petition for Annexation of Unincorporated Adjoining Territory to the City of St. Cloud (St. Cloud, A-6108); Pages 49-50 and pp. 52-53, Findings of Fact, Conclusions and Order, In Re Petition for Incorporation of Columbus Township (I-68) and Petition by Forest Lake to Annex Certain Portions of Columbus Township (A-7371); see also Finding nos. 43 and 55, pp. 9 and 11, respectively, Findings of Fact, Conclusions and Order, In Re Petition for Incorporation of Burns Township pursuant to Minnesota Statutes § 414 (I-70)); Findings nos. 34, 69 and 76, pp. 13, 20 and 21, respectively, Findings of Fact, Conclusions of Law and Order, In the Matter of the Petition for the Incorporation of Empire Township (I-74).

V. Incorporation is in the Best Interests of the Township’s Residents and the Surrounding Area.

A. Incorporation Will Allow the Township to Operate More Efficiently.

Incorporation will unify the budget and levy powers in one single entity, the city council, which can react quicker and is better suited to Baldwin’s current situation than the township form of government. Unifying these powers will allow the city council to operate more effectively and efficiently from a fiscal perspective as a city rather than a township with split levying/budgeting authority. Incorporation is needed to stabilize the Township’s tax base and place it in a better position to adequately budget for long-term capital needs and to keep its population from being reduced below the 5,000 MSA threshold by unexpected and unplanned annexations.

B. Incorporation Will Allow the Township to Exercise Greater Economic Development Powers.

Currently, townships lack significant economic development powers that are available by statute to cities. As noted above, townships are not authorized to use TIF. TIF is used as an

economic development tool to assist in increasing a City's tax base. Upon incorporation, the City of Baldwin would be able to use TIF to provide economic development assistance to the industries and businesses seeking to locate in the newly-incorporated city.

C. Incorporation Will Increase the Ability of the Township to Serve Its Residents Across a Broad Range of Issues.

Incorporation of Baldwin Township would benefit the Township's residents in a number of ways, many of which have been discussed above and will only be briefly reviewed here:

- Incorporation will make it easier for the Township to make long-term financial commitments necessary to support capital intensive services as the City Council approves both the capital improvement plan and the tax levy.
- Incorporation would result in public safety decisions being made by the City Council that are in the best interest of the entire community rather than those very few residents who happen to show up in March when the levy for the entire Township is voted on by the electors.
- Incorporation would increase the Township's current police powers. For instance, Townships cannot require a vacant house to be boarded up; cities can.¹⁶⁶
- Incorporation will result in a net increase in state funding of \$646,127 as the City of Baldwin will be eligible for MSA and LGA funding.

VI. The Township is Prepared for Incorporation and Has Been Operating as a De Facto City for a Number of Years.

As was noted throughout the testimony presented at the hearing on this matter, Baldwin Township in many ways is unique as a Township, but very similar to most other cities its size. Effectively, Baldwin Township has been operating as a city in everything but name for a number of years. A sampling of Baldwin's current city attributes (which are generally rare for a Township) are as follows:

- The Township operates public parks and a system of trails.

¹⁶⁶ See Minn. Stat. § 463.251, granting this power to cities but not to townships.

- The Township has a full range of ordinances, including zoning and subdivision ordinances.
- The Township is in very good financial condition.
- From a financial perspective, Baldwin operations most closely resemble those of a city.
- The Township has adopted a Comprehensive Plan.
- The Township adopted zoning and subdivision ordinances and administers both throughout the entire Township.
- The Township has been operating with an appointed clerk (same as a statutory city) for a number of years.
- The Township has 2 full-time Public Works Maintenance staff.
- The Township has its books audited every year—a requirement for most cities but not for most townships.
- The Township contracts for building inspection and planning services, which is unusual for townships.

Taken as a whole, these attributes present a strong case that the Township’s legal status should now be changed to that of a City to better reflect the true nature of its operations.

VII. No Adjacent Municipality Can Better Serve Any Part of Baldwin Township.

As discussed in more detail above, there was no evidence presented at the hearing which indicated that any portion of Baldwin Township could be better served by the City of Princeton, the only city that abuts any part of Baldwin Township. To the contrary, the record contains an abundance of evidence that Baldwin Township is in the best position to provide services to its residents. The evidence in the record clearly establishes that no part of Baldwin Township should be annexed to any other jurisdiction, leaving incorporation as the best alternative for the continued provision of needed services to the residents of the Township.

VII. Election Preferences.

Pursuant to Minnesota Statutes §§ 414.02 and 414.09, any order incorporating Baldwin Township must contain provisions for the election of a City Council. If incorporated, Baldwin Township would be a statutory Optional Plan-A City, whose officers would consist of four

elected city council members, an elected mayor, an appointed clerk and an appointed treasurer. Pursuant to Minn. Stat. § 412.02, the city council seats are to be four-year seats (staggered terms with two seats on the ballot at each election) while the mayor's seat would be a two-year seat. The Township would prefer that its regular elections be held in even numbered years.

If incorporated, the Township would prefer that the incorporation order require an election to be held on November 5, 2024 or as soon thereafter as may be allowed under Minnesota law. Minn. Stat. § 205.10, subd. 3a only allows special elections in a city or town to be held on certain dates. Holding the special election on November 5, 2024 or as soon thereafter as may be allowed under Minnesota law would also allow the Township to comply with the notice requires of Minn. Stat. § 205.16, subd. 4 (before every municipal election, the Town Clerk must give the County Auditor at least 74 days written notice). The special election would be for the following seats containing the following initial terms:

- Mayor—term expiring on December 31, 2026
- Council Member #1—term expiring December 31, 2026
- Council Member #2—term expiring December 31, 2026
- Council Member #3—term expiring December 31, 2028
- Council Member #4—term expiring December 31, 2028

The Township would prefer that the candidate filings for council member seats #1 and #2 be combined as one filing with the two candidates receiving the highest vote totals being seated upon the city council. The Township proposes a similar system for the filing and election of council member seats #3 and #4. Under this system, the Mayor's seat and council members' #1 and #2 seats would be up for election in November, 2026, and the Mayor's seat and council members' #3 and #4 seats would be up for election in November, 2028. The Township would need the incorporation order to be issued by this Court by August 22, 2024 in order to meet the

74-day notice period the Township is required to give the County Auditor in order for the election to be held on November 5, 2024.

CONCLUSION

Given the overwhelming weight of the evidence in favor of incorporation, and in recognition that Baldwin Township has effectively operated as a city for a number of years in all but name, Baldwin Township respectfully requests that its petition for incorporation be granted in its entirety.

Dated: April 19, 2024



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EXHIBIT A

I-43 Grant
Denied

BEFORE THE MUNICIPAL COMMISSION
OF THE STATE OF MINNESOTA

Robert W. Johnson	Chairman
Thomas J. Simmons	Vice Chairman
Gerald J. Isaacs	Member
Peter E. Tibbetts	Ex-Officio Member
Arthur E. Schaefer	Ex-Officio Member

IN THE MATTER OF THE RESOLUTION)
OF THE TOWN OF GRANT FOR INCOR-)
PORATION AS THE CITY OF GRANT)

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER

The above-entitled matter came on for hearing before the Minnesota Municipal Commission on February 9, 1972, at the Washington County Office Building, Stillwater, Minnesota and was immediately continued to March 30, 1972, at the same location. The hearing was continued to June 8, 1972, August 16, 1972, August 31, 1972 and November 1, 1973. A quorum of the Commission was present at all sessions of the hearing.

The Town of Grant appeared by and through its Attorney, Robert Briggs. Bernard N. Litman, Attorney at Law, appeared representing Alan P. Davidson and Gloria Davidson, objectioners. Richard W. Copeland, Attorney at Law, appeared representing the City of Dellwood. Harold D. Kimmel, Attorney at Law, appeared representing the City of Stillwater. All parties were heard who desired to be heard.

After due and careful consideration of all evidence, together with all records, files and proceedings, and being fully advised in the premises, the Minnesota Municipal Commission hereby makes and files the following Findings of Fact, Conclusions of Law and Order.

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FINDINGS OF FACT

1. The resolution of the Board of Supervisors of Grant Township for incorporation was filed on October 12, 1971 and was in all respects proper in form, contents, execution and filing.

2. Due, timely, and adequate legal notices of the hearing ordered by the Minnesota Municipal Commission were properly published, served and filed.

3. That the area proposed for incorporation is the entire Town of Grant.

4. The population of the Township according to the 1970 federal census was 1,797. The population of the township since the turn of the century is as follows:

<u>Year</u>	<u>Population</u>	<u>Year</u>	<u>Population</u>
1900	822	1940	602
1910	1,242	1950	704
1920	600	1960	1,034
1930	631		

5. The Metropolitan Council projected population for 1980 is 2,000 and for 1990 is 2,500. The Washington County Planning Department projects the population for 1980 at 2,800 and 1990 at 3,500.

6. The quantity of land proposed for incorporation is approximately 17,356 acres, 93% of which is unplatted.

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7. The latest comprehensive township plan shows that the present pattern of physical development within the area proposed for incorporation is "still highly agricultural" with residential development scattered throughout the township on less than 3½ percent of the total township acreage. Less than 1½ percent of the township acreage is devoted to commercial or industrial purposes with the record revealing a total of only six (6) such establishments.

8. The township planner testified that in his expert opinion the area proposed for incorporation is rural in character and is not about to become urban or suburban in character.

9. The township comprehensive sewer plan projects that into the future less than 23 percent of the total township acreage will be devoted to residential, industrial or commercial purposes. An expert witness called by petitioners indicated that projected future plans call for a maximum of 20 percent of the tax base being derived from other than single family residential development. No studies or testimony were presented to the commission supporting this division as a sound fiscal base for community development.

10. The township comprehensive sewer and development plans call for low density rural development, limiting gross dwelling unit density to one unit per 2½ acres of buildable land within the community. They call for no sanitary sewer service anywhere in the township for at least thirty (30) years.

11. The Washington County comprehensive development plan for the area calls for industrial and urban density residential land use in the

EXHIBIT A

southwest quarter of the township requiring public utilities. The plan calls for extension of sanitary sewer and water service throughout the south half of the township.

12. The Metropolitan Council professional planners did a thorough special study of the area concluding that the petition for incorporation should be denied and that piecemeal annexation should be discouraged for the next ten to fifteen years. The Metropolitan Council and Sewer Board plans call for urban development and public sanitary sewers in much of the western half of the township during the next fifteen (15) years.

13. The township government has developed a comprehensive zoning and building control program restricting development to lots of $2\frac{1}{4}$ acres or more and encouraging development on lots larger than 5 acres. Testimony was unanimous and extensive to the effect that these controls are being administered aggressively and efficiently. The ordinances delete provisions in the Washington County Subdivision Code requiring building placement to facilitate potential re-subdivision. This deletion may have serious consequences in the event that utilities become available in the future.

14. The area proposed for incorporation is divided into three major watersheds: West towards Mahtomedi, East towards Stillwater and South towards Lake Elmo.

15. The proposed incorporation would divide two lakes and create difficulties in the provision of unified lake and lane use control.

EXHIBIT A

16. Petitioners for incorporation presented the commission with a great deal of testimony on soil conditions, largely unrefuted, in support of the practicality of their plan to develop a city entirely sewerred by private on-site sewer disposal systems. Although the Metropolitan Sewer Board did not provide the commission with any specific contrary analysis with regard to soil data, they did express serious concerns over the on-site sewage disposal policy. The Sewer Board specifically suggested provisions for placement of buildings to allow for future re-subdivision when sewer becomes necessary.

17. Township governmental services are limited to street maintenance and police protection provided by two part-time constables. The township has no full-time employees. Police and fire protection are provided by the cities of Mahtomedi, Dellwood and Stillwater. There is, at present, no public water, sewer or active park and recreation program in the area proposed for incorporation. The township does not blacktop its roads or participate in the county purchasing pool to control dust along the roads.

18. The only testimony on current problems of environmental pollution in the record refers to the failure of individual on-site sewage disposal systems bordering Mahtomedi. Storm water run off carrying the effluent which has leached through the soils to the surface drains westerly into Mahtomedi and thus into White Bear Lake. Petitioners presented no testimony as to how this problem might be alleviated. The Metropolitan Council Phase I Study cites the future chance of a severe health problem in urging that development into Grant Township proceed from Mahtomedi, where sewer lines are in existence. No study was

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presented to the commission on the likelihood of future water pollution problems resulting from the on-site sewage disposal policies.

19. The assessed valuation of the area proposed for incorporation has increased steadily over the last ten years, from \$510,564 in 1961 to \$1,477,503 in 1971. Eighty percent of this assessed valuation is derived from unplatted property. Grant Township's mill rates fluctuated between 13 and 19 mills from 1962 to 1971 and decreased in 1972 to 5.08. The trends in assessed valuation and mill rates are similar to those in other surrounding unincorporated and incorporated communities. The total mill rate for township, school and county purposes increased steadily from 286.41 in 1962 to 451.26 in 1971, decreasing in 1972 to 383.34. The township has not incurred any bonded indebtedness.

20. No study was presented by the petitioners as to the effect of the proposed incorporation on adjacent communities. The Metropolitan Council Planning Staff's expert opinion was that the proposed incorporation would create difficulties for surrounding communities. Dellwood has commissioned a consultant's report which urges annexation of part of the area proposed for incorporation.

21. The area proposed for incorporation is divided roughly in half by the Stillwater and Mahtomedi school districts.

22. The petitioners presented no analysis of whether needed governmental service can best be provided through incorporation or annexation to an adjacent community. There is nothing in the record to support the conclusion that incorporation would, in any way, improve the provision of municipal services. The township planner and the Metropolitan

EXHIBIT A

Council planner both presented unchallenged expert testimony to the effect that isolated areas in the Northwest corner of the township would be better served by annexation to Dellwood. The Metropolitan Council planner also concluded that "the gradual transfer of land from Grant to Mahtomedi would provide for more orderly and economic development."

23. The petitioners presented very little evidence suggesting that the town government was inadequate to deal with the problems of the area. The township planner concluded that in his expert opinion the township form of government is adequate to protect the public health, safety, and welfare in the area proposed for incorporation.

24. Under special provisions of state law, Grant Township has village powers and taxing authority and is capable of utilizing that power and authority to deal with the problems of the area without incorporation.

25. There is no nucleus of population and urban development within the area proposed for incorporation.

26. There was no evidence presented by petitioners tending to prove that the population in the area proposed for incorporation is characterized by interrelated and integrated social, cultural and economic ties. No evidence was presented of a unity or community of interest.

CONCLUSIONS OF LAW

1. That the Minnesota Municipal Commission duly acquired and now has jurisdiction over the within proceeding.
2. That the area proposed for incorporation or a part thereof

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would be better served by annexation to or consolidation with adjacent municipalities.

3. That the existing township form of government is adequate to protect the public health, safety and welfare.

4. That the petition for incorporation should be denied.

ORDER

IT IS HEREBY ORDERED: That the petition for incorporation is in all respects DENIED.

Dated this 7th day of February, 1974

MINNESOTA MUNICIPAL COMMISSION
304 Capitol Square Building
St. Paul, Minnesota 55101

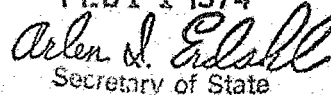


Howard L. Kaibel, Jr.
Executive Secretary

26371

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

FEB 1 1974



Arlen J. Edsall
Secretary of State

EXHIBIT A

I-43 Grant

MEMORANDUM

The purpose of the legislature in establishing the Minnesota Municipal Commission is outlined in the opening section of Chapter 414:

"The legislature finds that: (1) sound urban development is essential to the continued economic growth of this state; (2) municipal government is necessary to provide the governmental services essential to sound urban development and for the protection of health, safety, and welfare in areas being used intensively for residential, commercial, industrial, institutional and governmental purposes or in areas undergoing such development; (3) the public interest requires that municipalities be formed when there exists or will likely exist the necessary resources to provide for their economical and efficient operation; (4) annexation to or consolidation with existing municipalities or unincorporated areas unable to supply municipal services should be facilitated; and, (5) the consolidation of municipalities should be encouraged. It is the purpose of this chapter to empower the Minnesota Municipal Commission to promote and regulate development of municipalities so that the public interest in efficient local government will be properly recognized and served."

After thorough review of hundreds of pages of testimony, exhibits and arguments, the Commission's best judgment as to how to carry out this legislative purpose is to deny the proposed incorporation. The statute applied to the record clearly requires that result.

The statute unequivocally states (Minnesota Statutes 414.02, Subdivision 3): "Upon completion of the hearing the commission may order the incorporation if it finds that the property to be incorporated is now or is about to become urban or suburban in character, or that the existing township form of government is not adequate to protect the public health, safety, and welfare." As the findings of fact accompanying this order manifestly catalog, the record presented to the commission cannot be interpreted to support either conclusion. The entire record including the clearly expressed judgment of petitioners own expert witness is consistent and unambiguous. The township is not about to become urban or suburban in character and the township form of government is adequate to protect the public health, safety, and welfare.

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The statute goes on to say "The commission may deny the incorporation if the area or a part thereof, would better be served by annexation to or consolidation with an adjacent municipality." The commission's best judgment on the record and again supported by the expert testimony of petitioner's and Metropolitan Council planners is that at least part of the northwest area proposed for incorporation would be better served by annexation to Dellwood. We have no jurisdiction - no power - under the statute to consider or order the annexation. Our only alternative, other than denial of the incorporation, would be to exclude the area and incorporate the remainder of the township. This would leave a Grant Township of only a few sections of land and is obviously unsatisfactory. Perhaps the ultimate solution, suggested by some persons, is an amendment to the incorporation legislation giving the commission the jurisdiction to order annexations in this situation, but this is up to the legislature.

The basic reason reiterated throughout the record for seeking the incorporation is to prevent future annexations. The incorporation statute does not include prevention of future boundary adjustment as a reason for approval. Indeed, one of the basic reasons for creating the commission in 1959 was to curtail the rash of "defensive incorporations" that occurred in the 1950's.

We do recognize that recurrent piecemeal annexations hinder long range community planning and have consistently urged local political subdivisions to work out comprehensive mutual boundary adjustment programs and agreements. The commission would like to assist this process in any way that local communities feel would be helpful. The Metropolitan Council staff recommended that the Municipal Commission deny any further piecemeal annexations for a period of ten or fifteen years. We feel that this would be arbitrary in this

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situation and would only perpetuate the problem in the northwest part of the township. We do, however, today announce a moratorium in further annexations in Grant Township for a period of at least two years with the following exceptions: Proceedings for the annexation of property lying west of Sections 4, 9 and 16 will be entertained. Proceedings for the annexation of other township property in special situations will be considered if concurred in by the Grant Town Board.

We stress that this denial of the proposed incorporation is without prejudice to a future filing at any time. The denial should not be interpreted as necessarily foreclosing the possibility of some future incorporation in this area under appropriate circumstances on a proper record.

Most of the hearing on this incorporation was devoted to a discussion by petitioners of their proposed comprehensive plans for future development. While it is not our function to be critical of or otherwise judge local planning efforts, the statute does require that we examine "Comprehensive Plans for the development of the area." We stress that the township plans had very little to do with the decision in this matter noting particularly that such plans would have been subject to total revision by the newly elected council in the event incorporation were granted.

Witnesses stressed that the plan provides a diversified "mosaic" of large lots. The one element excluded from such a mosaic is low and lower middle income families unable to afford homes on large lots with private sewer and water facilities. The commission has never deliberately created a community or adjusted community boundaries in a manner which effectively excludes persons of a particular social or economic class. In our view, communities serve and regulate social institutions best if they contain and reflect maximum socio-economic diversity. This observation should not be taken as criticism of the use of planning to control and retard premature urban growth or sprawl. Our only concern is that plans should contain provisions for low income - and admittedly high density - housing

EXHIBIT A

developments at such time as the required utilities, facilities and services become available. Another way of achieving this integration of high and low income and density would be to consider consolidation with adjacent communities.

Another diversity lacking in the plan is fiscal. The proposal calls for extraordinary reliance on a single family residential property tax base deliberately excluding or restricting multiple family residential, commercial or industrial development. No study was done of the burden that this might place in the long range future on homeowners. While we have no basis for reaching any conclusions as to the economic viability of this construct, we urge careful study of the long range ramifications. One witness made reference to the "fiscal disparities" legislation allowing communities to share the tax base of new industrial and commercial growth elsewhere as a partial solution to this problem. In our view, this would constitute a misuse of remedial legislation for tax sharing if deliberately utilized to avoid any share of the burden of servicing and regulating such commercial and industrial growth. The law as we see it was developed to assist communities relying excessively on residential property taxes through lack of foresight or otherwise, not to encourage future excessive reliance.

Another key element in the comprehensive plan is avoiding public sanitary sewers in favor of private on-site septic systems. We urge local officials to heed the warning of the Metropolitan Sewer Board:

"Historically, it has been a generally known fact that soil absorption systems, even though planned properly, will fail over some time period. The township should be aware of the need for providing some alternate method of sewage disposal provided these systems fail at some future date, say within a period of 10 to 20 years. One such alternative may be to require that dwellings be placed on these large acreage lots of two and a quarter acres in such a manner that it would permit subdivision at some future date when a central system of sanitary sewage collection may be necessary. Experience has shown that it is not generally economically feasible to provide local sanitary sewer systems to acreages which are much larger than one acre in area.

(Emphasis added)

EXHIBIT A

Finally, we question, with very little contrary evidence in the record, the presumption that higher density development can be practically eliminated in the near future, particularly in those areas adjacent to urban growth in Mahtomedi. We urge local leaders to review the letter, cited in the record, of August 9, 1972 from the Chairman of the Metropolitan Council to the Grant Town Board referring to the map of "Proposed Urban Lane Use 1972-1990", which shows urban development and public utilities in the western part of the township. This pattern of development is also called for in the Washington County comprehensive development plan for the area.

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STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

FEB 11 1974

Arlen J. Edsall
Secretary of State

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including areas whose boundaries would touch but for an intervening roadway, railroad, waterway or parcel of publicly owned land.

Sec. 8. Minnesota Statutes 1967, Section 414.02, is amended to read:

414.02 Incorporation of a village. Subdivision 1. **Initiating the incorporation proceedings.** This section provides the exclusive method of incorporating a village in any county containing a city of the first or second class, in any county within any metropolitan areas as defined in Minnesota Statutes, Section 473.02, Subdivision 5, or in any other area of Minnesota if ~~a petition is filed to incorporate a~~ *the proposed* new municipality is within four miles of the boundary of an existing municipality. In any other area in Minnesota the petition ~~or resolution to incorporate for incorporation~~ shall be filed with the board of county commissioners which shall apply the standards and procedures of this section in determining whether or not to order an incorporation. ~~election as herein provided. Hearings before the board of county commissioners shall be conducted by the secretary. Three~~ *Proceedings for incorporation of a village may be initiated by petition of 100 or more freeholders residing property owners or by resolution of the town board having jurisdiction within an area containing a resident population of not less than 500 persons, and which is not included within the limits of any incorporated municipality and which area includes land that has been platted into lots and blocks in the manner provided by law; . may initiate proceedings for incorporation as a village. They shall take a census of the resident population in the area or may use a federal census made for the area within one year preceding the date of the petition or may use the latest metropolitan planning commission estimate of the population within the area. If the population of the proposed area is found to be 500 or more, a petition may be prepared and submitted to the secretary of the commission requesting the commission to hold a hearing on the proposed incorporation. The petition shall be attached to the census list or the metropolitan planning commission estimate or the federal census figures* *The petition or resolution shall be submitted to the secretary and shall state the quantity of land embraced in it, platted and unplatted, the assessed valuation of the property, both platted and unplatted, the estimated number of actual residents, the proposed name of the village, a brief description of the existing facilities as to water, sewage disposal, and fire and police protection, the names of all parties entitled to mailed notice under section 19, the reason for requesting incorporation, and shall include a map setting forth the boundaries of the territory. It shall be signed by at least 100 freeholders who are residents of the area to be incorporated; and if a census was taken, it shall be verified by the oath of the census takers declar-*

Changes or additions indicated by italics, deletions by strikeout.

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ing that the census was accurately taken; specifying the dates when it was begun and completed; and that the statements in the petition are true.

Subd. 2. **Commission's hearing and notice.** Upon receipt of a petition or *resolution* made pursuant to subdivision 1 of this section, the secretary of the commission shall designate a time and place for a hearing on the petition; such time to be not less than 30 or more than 120 days from the date the petition was received: *in accordance with section 19.* The place of the hearing shall be within the county in which the greater area of the property to be incorporated is located and is to be established for the convenience of the parties concerned. The secretary shall cause a copy of the petition together with a notice of the hearing to be sent to each member of the commission; to the chairman of the county board and the town board in which all or a part of the property to be incorporated is located; and any duly constituted municipal or regional planning commission exercising authority over all or part of the area. They may submit briefs, prior to the hearing, for or against the proposed incorporation; stating clearly and succinctly the reasons therefor. Notice shall be posted not less than 20 days before the hearing in three public places in the area described in the petition; and the secretary shall cause notice of the hearing to be published two successive weeks in a newspaper qualified as a medium of official and legal publication of general circulation in the area to be incorporated. The cost of publishing and posting is to be borne by the petitioners. The hearing may be adjourned from time to time.

Subd. 3. **Commission's order.** Pursuant to a hearing on a petition for the incorporation of a village under subdivision 4; *Upon completion of the hearing* the commission shall approve the petition *for* may order the incorporation if it finds that the property to be incorporated is now, or is about to become, urban or suburban in character; *, or that the existing township form of government is not adequate to protect the public health, safety, and welfare.* The commission may; in any case; approve the petition if it finds that the existing township form of government is not adequate to protect the public health, safety and welfare in reference to plat control or land development and construction which may be reasonably expected to occur within a reasonable time thereafter. *deny the incorporation if the area, or a part thereof, would be better served by annexation to or consolidation with an adjacent municipality.* As a guide in arriving at a determination, the commission shall make findings consider as to the following factors: (1) The population of the area within the boundaries of the proposed incorporation. (2) The area of the proposed incorporation. (3) The area of platted land relative to unplat-

Changes or additions indicated by *italics*, deletions by ~~strikeout~~.

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ted land. (4) The character of the buildings on the platted and unplatted lands. (5) Past expansion in terms of population and construction. (6) Prospective future expansion. (7) The assessed value of platted land relative to the assessed value of the unplatted areas. (8) The present and expected necessity and feasibility of providing governmental services such as sewage disposal, water system, zoning, street planning, police, and fire protection. (9) The adequacy of the township form of government to cope with problems of urban or suburban growth in the area proposed for incorporation:

(a) *Present population, past population growth and projected population for the area;*

(b) *Quantity of land within the area proposed for incorporation;*

(c) *Present pattern of physical development in the area including residential, industrial, commercial and institutional land uses;*

(d) *Comprehensive plans for development of the area including development as projected by the metropolitan council or the state planning agency;*

(e) *Type and degree of control presently being exercised over development in the area including zoning ordinances, subdivision regulations and housing and building codes;*

(f) *Natural terrain of the area including general topography, major watersheds, soil conditions and such natural features as rivers, lakes and major bluffs;*

(g) *Present governmental services being provided to the area including water and sewer service, fire and police protection, street improvements and maintenance, and recreational facilities;*

(h) *Existing or potential problems of environmental pollution and the need for additional services to avoid or minimize these problems;*

(i) *Fiscal data of the area including assessed valuation trends, mill rate trends (state, county, school district and town) and present bonded indebtedness;*

(j) *Relationship and effect of the proposed incorporation on communities adjacent to the area and school districts within and adjacent to the area;*

(k) *Analysis of whether the needed governmental services can best be provided through incorporation or annexation to an adjacent municipality; and*

Changes or additions indicated by italics, deletions by ~~strikeout~~.

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(1) *Adequacy of town government to deal with problems of the area.*

The commission ~~shall have authority to~~ *may* alter the boundaries of the proposed incorporation by increasing or decreasing the area to be incorporated so as to include only that property which is now, or is about to become, urban or suburban in character; ~~, or may exclude property that may be better served by another unit of government. In the event the boundaries are to be increased notice shall be given by three weeks' published notice in a newspaper qualified as a medium of official and legal publication of general circulation in the area affected. Notice thereof shall be mailed to all property owners on record in the office of the county treasurer in the area to be added; and the hearing shall reconvene not less than 20 days after such notice; unless within the 20 days those entitled to notice give their written consent to such action.~~ Notwithstanding any other provision of law to the contrary relating to the number of wards which may be established, the commission may provide for election of ~~trustees councilmen~~ by wards, not less than three nor more than seven in number, whose limits are prescribed in the commission order upon a finding that area representation is required to accord proper representation in the proposed incorporated area because of uneven population density in different parts thereof or the existence of agricultural lands therein which are in the path of suburban development, but after four years from the effective date of an incorporation the council of the village may by resolution adopted by a 4/5ths vote abolish the ward system and provide for the election of all ~~trustees councilmen~~ at large as in other villages. ~~The petition shall be denied if it appears that annexation to an adjoining municipality would better serve the interests of the area. If the proposed incorporation includes a part of an organized township; the commission shall apportion such property and obligations in such manner as shall be just and equitable having in view the value of the township property; if any, located in the area to be incorporated; the assessed value of all the taxable property in the township; both within and without the area to be incorporated; the indebtedness; the taxes due and delinquent and other revenue accrued but not paid to the township. The commission order shall apportion taxes due between the township and annexing municipality on an equitable basis giving due regard to the liability of the annexing municipality to furnish services; or extend utilities to the annexed area. The order shall be issued by the commission within a reasonable time after the termination of the hearing.~~

~~An~~ *The commission's order approving a petition for incorporation made pursuant to subdivision 1 shall fix a day not less than 20 days nor more than 40 days after the entry of such order when an*

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election shall be held at a place designated by the commission *provide for the election of village officers in accordance with section 19, within the area to be incorporated.* The secretary shall cause a copy of the order affirming the petition, as submitted or as amended by the commission, including notice of the election, to be posted not less than 20 days before the election in three public places in the area described in the petition, and shall cause notice of the election to be published two successive weeks in a newspaper qualified as a medium of official and legal publication, of general circulation in the area to be incorporated. The commission shall appoint the necessary election judges from voters resident in the area and shall supervise them in their duties. The commission shall designate the polling place or places, using so far as possible the usual polling place or places. The polls shall be open at least 13 hours and until at least 8 p.m. The judges shall conduct the election so far as practicable in accordance with the laws regulating the election of town officers. Only voters residing within the territory described in the commission's order shall be entitled to vote. The ballot shall bear the words "For Incorporation" and "Against Incorporation" with a square before each of the phrases in one of which the voter shall make a cross to express his choice. The ballots, election supplies, posting, publishing, and the judges shall be provided and paid for by the petitioners. The order shall also provide for the submission of plan of government shall be "Optional Plan A", *provided that an alternate plan may be adopted pursuant to Minnesota Statutes 1967, Section 412.551, at any time.* at the same time as the incorporation election. The ballot shall bear the words, "If the incorporation is successful, should Optional Plan A (modifying the standard plan by providing for the appointment by the Council of the Clerk and Treasurer) be adopted as the form of government for the new village? Yes — No."

Subd. 4. Upon the completion of the counting of the ballots, the judges of the election shall make a signed and verified certificate declaring the time and place of holding the election, that they have canvassed the ballots cast, and the number cast both for and against the proposition, and they shall then file the certificate with the secretary of the commission. If the certificate shows that a majority of the votes cast were "For Incorporation," the commission shall execute an incorporation order. The secretary shall attach the certificate to the original petition, the original order affirming the petition as submitted or as amended in the order, and the original proofs of the posting of the election notice and incorporation order. The secretary shall transmit to the secretary of state and to the county auditor or auditors of the county or counties in which the property is located a certified copy of these documents to be then filed as a public record. The in-

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corporation shall be effective as of the date of such filing or on later date as is fixed in the incorporation order. If the vote is adverse, the expense of the attempted incorporation shall be borne by the petitioners. If the vote is favorable, all proper expenses incurred in the incorporation shall be a charge upon the village. *Effective date of incorporation. The incorporation shall be effective upon the election and qualification of new village officers or on such later date as is fixed by the commission in its order.*

Sec. 9. Minnesota Statutes 1967, Chapter 414, is amended by adding a section to read:

[414.021] Consolidation proceedings; municipality and town. *Subdivision 1. Initiating the proceeding. This section provides the exclusive method of consolidating an existing municipality and an abutting township into a single new municipality. A proceeding may be initiated by submitting to the secretary a resolution of the municipal council together with a resolution of the township board or a petition of 100 property owner residents of the township stating their desire to consolidate into a single new municipality.*

Subd. 2. Commission's hearing and notice. Upon receipt of the resolutions, or resolution and petition, the secretary shall designate a time and place for hearing in accordance with section 19.

Subd. 3. Commission's order. Upon completion of the hearing the commission may order the consolidation if it finds that it will be in the best interest of the area. The consolidation may be denied if it appears that annexation of all or a part of the township territory to an adjacent municipality, would better serve the interests of the area. As a guide in arriving at its determination, the commission shall consider the following factors:

(a) Present population, past population growth and projected population for the municipality and township;

(b) Quantity of land within the municipality and township;

(c) Present pattern of physical development in the municipality and township including residential, industrial, commercial and institutional land uses;

(d) Comprehensive plans for development of the area including development as projected by the metropolitan council or the state planning agency;

(e) Type and degree of control presently being exercised over development in the area including zoning ordinances, subdivision regulations and housing and building codes;

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(f) *Natural terrain of the area including general topography, major watersheds, soil conditions and such natural features as rivers, lakes and major bluffs;*

(g) *Present governmental services being provided to the area including water and sewer service, fire and police protection, street improvements and maintenance, and recreational facilities;*

(h) *Existing or potential problems of environmental pollution and the need for additional services to avoid or minimize these problems;*

(i) *Fiscal data of the municipality and township including assessed valuation trends, mill rate trends (state, county, school district and town) and present bonded indebtedness;*

(j) *Relationship and effect of the proposed consolidation on communities adjacent to the area and school districts within and adjacent to the area;*

(k) *Analysis of whether the needed governmental services can best be provided through consolidation, incorporation, or annexation to an adjacent municipality;*

(l) *Adequacy of town government to deal with problems of the town area;*

(m) *Availability of space within the consolidating municipality to provide for projected future growth;*

(n) *Plans and programs by the consolidating municipality for providing needed government services to the consolidating town;*

(o) *Degree of contiguity of the boundaries between the consolidating municipality and town; and*

(p) *If only a part of a township is included, the ability of the remainder of the township to continue or the feasibility of it being incorporated separately or being annexed to another municipality or combined with another town.*

The commission may alter the boundaries of the proposed municipality by increasing or decreasing the area to be incorporated so as to include only that property which is now or is about to become urban or suburban in character, or may exclude property that may be better served by another unit of government.

The order shall provide for the election of new municipal officers in accordance with section 19. If the consolidating municipality is a village, the plan of government of the new village shall be Optional

Changes or additions indicated by italics, deletions by ~~strikeout~~.

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Plan A, provided that an alternate plan may be adopted pursuant to Minnesota Statutes 1967, Section 412.551, at any time. If the consolidating municipality is a city, the new municipality shall be governed by the home rule charter or statutory form which governs the consolidating municipality, except that any ward system for the election of councilmen shall be inoperable. The ordinances of both the consolidating municipality and the township shall continue in effect within the former boundaries until repealed by the governing body of the new municipality.

Notwithstanding any other provision of law to the contrary the commission may provide for election of councilmen by wards, not less than three nor more than seven in number, whose limits are prescribed in the commission order, upon a finding that area representation is required to accord proper representation in the new municipality because of uneven population density in different parts thereof or the existence of agricultural lands therein which are in the path of suburban development; but after four years from the effective date of a consolidation the council of the municipality may by resolution adopted by a four-fifths vote abolish the ward system and provide for the election of all councilmen at large.

Subd. 4. Effective date. The consolidation shall be effective upon the election and qualification of new municipal officers or on such later date as is fixed by the commission in its order. Until such effective date the town board and other officers of the consolidating town shall continue to exercise their powers and duties under the town laws in that portion of the new municipality that was formerly the town, and the council and other officers of the consolidating municipality shall continue to exercise their powers and duties in that portion of the new municipality that was formerly the municipality. Thereafter the town board and the council of the consolidating municipality shall have no jurisdiction within the new municipality, and the new municipal council and other new officers shall act in respect to any matters previously undertaken by the town board of supervisors or municipal council within the limits of the new municipality, including the making of any improvement and the levying of any special assessments therefor, in the same manner and to the same effect as if such improvement had been undertaken by the new municipality.

The new municipal council may continue or discontinue any commissions that may have previously existed in the town or former municipality.

Subd. 5. Expenses of proceeding. The new municipality shall be liable for payment of all expenses of incorporation, consoli-

Changes or additions indicated by italics, deletions by ~~strikeout~~.

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dation and annexation proceedings incurred during the last three previous years by the consolidating town and municipality.

Sec. 10. Minnesota Statutes 1967, Chapter 414, is amended by adding a section to read:

[414.031] Annexation of unincorporated property to a municipality by commission order. Subdivision 1. Initiating the proceeding. *A proceeding for the annexation of unincorporated property abutting a municipality may be initiated by submitting to the secretary and the affected township one of the following:*

(a) *A resolution of the annexing municipality;*

(b) *A resolution of the township containing the area proposed for annexation;*

(c) *A petition of 20 percent of the property owners or 100 property owners, whichever is less, in the area to be annexed;*

The petition, or resolution shall set forth the boundaries of the territory, the quantity of land within the boundaries, the number of residents, the existing public facilities and services, the names of all parties entitled to notice under section 19, and the reasons for requesting annexation. If the proceeding is initiated by a petition of property owners, the petition shall be accompanied by a resolution of the annexing municipality approving the annexation.

Subd. 2. Township's option. *In the case of an annexation initiated under (a) or (c) of Subdivision 1 of this section, an affected township may request discussions with the annexing municipality to designate an area as in need of orderly annexation. Such request shall be made by mail to the annexing municipality within 30 days of receipt by an affected township of the document initiating the proceeding, and a copy shall be submitted to the secretary. Upon receipt of such request the secretary shall designate a time and a place for a hearing in accordance with section 19 of this act, except that the proceeding shall come on for hearing within 120 to 180 days from receipt by the commission of the document initiating the proceeding. Prior to the date of hearing the annexing municipality and the affected township may initiate a proceeding for orderly annexations within a designated area under section 11, and the original annexation proceeding shall be terminated. Otherwise the commission shall conduct its hearing and may by order designate an area as in need of orderly annexation. In determining the area in need of orderly annexation, the commission shall consider the factors set forth in subdivision 4 of this section insofar as applicable. Thereafter, annexations within*

Changes or additions indicated by italics, deletions by ~~strikeout~~.

EXHIBIT C

REC'D - MMB APR 28 1999

IN THE MATTER OF THE PETITION OF THE RESIDENTS OF THE TOWN OF FOREST LAKE FOR ANNEXATION OF THE UNINCORPORATED ADJOINING PROPERTY TO THE CITY OF FOREST LAKE, MINNESOTA PURSANT TO MINNESOTA STATUTES 414.031

To: Minnesota Municipal Board
3225 Bandana Square
1021 Bandana Boulevard E
St. Paul, Minnesota 55108

*Rec'd 4-28-99
APPROX. 197
SIGNATURES*

The Minnesota Municipal Board is hereby requested to hold a public hearing on the question of annexing certain property to the City of Forest Lake, Minnesota.

The petitioner for annexation is 100 property owners in the area to be annexed. (If the land is owned by both husband and wife, both must sign the petition to represent all owners.) The number of petitioners required by M.S. 414.031 to commence a proceeding is 20% of the property owners or 100 property owners, whichever is less, in the area to be annexed.

The area proposed for annexation is described as follows:

EVERYTHING WITHIN THE BOUNDARIES OF THE TOWN OF FOREST LAKE

1. The petitioners have submitted a copy of this petition to the Town of Forest Lake on 4-28-99.
2. The area proposed for annexation abuts the City of Forest Lake on the City's north, east and south boundaries thereof, and none of it is presently a part of any incorporated city or in an area proposed for orderly annexation.
3. The total acreage of the area proposed for annexation is 20,800 acres.
4. The petitioners believe that all of this property is or is about to become urban or suburban in character.
5. Since the governing bodies of the City of Forest Lake and The Town of Forest Lake are unable to work together towards a reasonable agreement of merger, the petitioners find the only way to unite the Forest Lake community is through this request for annexation.
6. Parties entitled to notice under Minnesota Statutes 414.09 are: City of Forest Lake and Town of Forest Lake.
7. If this petition is by property owners, a copy of a resolution from the City of Forest Lake, the annexing municipality, supporting the annexation is attached hereto.

(1)

EXHIBIT C

REC'D. BY APR 28 1999
MME

Property Owner(s) Signature (all owners must sign) Address

- 1 Chantal Dorval 21356 Healy Ave. Forest Lk. MN 55025
- 2 Don + Mary Mattison 20855 Georgia Ave Forest Lake 55025
- 3 Edward + Gail LeBuck 20840 Georgia Ave. Forest Lk 55025
- 4 Joe Embholt 20860 Georgia Ave FL 55025
- 5 ~~Bill + Gail Johnson~~ 20850 Georgia Ave FL 55025
- 6 ~~Bill + Gail Johnson~~ 20850 Georgia Ave No FL
- 7 Sepia Pfeffer-Schmidt 21399 Healy Ave W FL
- 8 John + Angen 7433-213 St. Cr. No. FL
- 9 Jan Hugin
Dan Haider
Margee Haider 7433 213th St. No. Cr. FL

EXHIBIT C

REC'D BY APR 28 1999
MME

Property Owner(s) Signature (all owners must sign) Address

1 Lynn O'Donnell 7616 209th St. N.

~~Lynn O'Donnell~~ 7616 209th St. No.

2 Sam Jean 7740 209th St. N.

Debra Jean 7740 209th St. N.

3 Paul Tyler 21525 Hilo Av N

Doris Tyler 21525 Hilo Av N

4 Steve Jones 7447 213st N

Steve Jones 7447 213st N

5 Robert H. Jones 7734 Hilo Ln N

6 Robert H. Jones 7734 Hilo Ln No.

Jose M. Jensen 7830 50th St N

Jose M. Jensen 7830 50th St No

7 Robert H. Jones 7605 209th St. No

Robert H. Jones 7605 209th St N

Jerry A. Gustafson 21699 Darwin Ave

Abby Jack 21699 " "

~~10875 213 SCANDIA 9726 SCANDIA TR~~

Sharon 10875 213 " "

over 10 8 9

over 20 10

EXHIBIT C

REC'D. BY APR 28 1999
MMB

Property Owner(s) Signature (all owners must sign) Address

Mary Gobins 21630 Forest Rd N F.L.

Carol Mergis 21850 Iden Ave. F.L.

Ann Botham 8875-212th St. F.L.

Don Sullivan 8659 215th St. N. F.L.

EXHIBIT C

REC'D. BY APR 28 1999
MAIL

Property Owner(s) Signature (all owners must sign) Address

Jacquie Kusner 21100 Floral Bay Cr
" " " "
Dileen Kusner

Colleen Dittmer 7660 N. Shore Tr. N.
Robert Dittmer

Paul Iversen 7985 230th SE LWN
Renda Iversen

Michael M. Tamm 7967 - 230th St. W. N.

Nancy Wasson 7934 230th St. N.
Brent Wasson

Jim Fenn 7755 209th St N
Pam Fenn & same as above

EXHIBIT C

REC'D. BY MMB APR 28 1999

Property Owner(s) Signature (all owners must sign) Address

Wayne Nathan Ray Nathan 20380 July Ave Lo
Forest Lake MN 55328

|

EXHIBIT C

APR 28 1999

Property Owner(s) Signature (all owners must sign) Address

Diane Formemann *21170 Floral Bay, F.L. NM*
M. Formemann *same*

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2

EXHIBIT C

RECORDED BY MAB APR 28 1999

Property Owner(s) Signature (all owners must sign) Address

Robert Walker and Laurel L. Wall

22055 Eden Ave North Forest Lake 55025

Blank lined area for additional signatures and addresses.

1

EXHIBIT C

REC'D. BY
MMB APR 28 1999

Property Owner(s) Signature (all owners must sign) Address

James D. [Signature] 9885 202 St. N.
Forest Lake Mn. 55025

Lynne D. Mrazka 9885 202 St
Forest Lake 55025

↓

EXHIBIT C

REC'D. BY APR 28 1996
MMB

Property Owner(s) Signature (all owners must sign) Address

Christine K Rutz 8621 N. Shore Trail

Dan M Rutz 8621 N Shore Trail

EXHIBIT C

REC'D. BY APR 28 1999
MME

Property Owner(s) Signature (all owners must sign) Address

William Novak 7611 - 208th St N.
Gayle Novak 7611 208th St N.

Blank lined area for additional signatures and addresses.

1

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EXHIBIT C

REC'D BY APR 28 1999
M.M.B.

Property Owner(s) Signature (all owners must sign) Address

Charlotte J. Koston 8689 North Shore Trail

~~Charlotte J. Koston~~ Forest Lake, MN 55025

Multiple horizontal lines for additional signatures and addresses.

1

2

EXHIBIT C

REC'D. BY APR 28 1999
MMB

Property Owner(s) Signature (all owners must sign) Address

Ardis Butzow-Felix 5777 270TH ST NW

Jack C Felix " " "

Blank lined area for additional signatures and addresses.

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2

EXHIBIT C

REC'D. BY **APR 28 1999**
MMB

Property Owner(s) Signature (all owners must sign) Address

Paula Hamner 21980 Jason Ave No. Forest Lake, MN
Bernard W. Coomes 21980 Jason Ave N. Forest Lake, MN

|

2

EXHIBIT C

REC'D. BY APR 28 1999
MMB

Property Owner(s) Signature (all owners must sign) Address _____

James Z. Decker / Ray J. Babcock / 8611 No Shore Dr.

|

|

EXHIBIT C

REC'D. BY APR 28 1999
MME

Property Owner(s) Signature (all owners must sign) Address

Edmund C Whitacre Jr 7411 NORTH SHORE TRAIL FOREST LAKE MN

Betty Lou Whitacre 7411 NORTH SHORE TRAIL FOREST LAKE

EXHIBIT C

REC'D. BY APR 28 1988
MAB

Property Owner(s) Signature (all owners must sign) Address

Jane B. Broede, 22652 Hayward Ave N.
FOREST LAKE 55025

Jane B. Broede 22652 Hayward
Forest Lake 55025

EXHIBIT C

REC'D. BY APR 28 1988
MME

Property Owner(s) Signature (all owners must sign) Address

1. ~~James A. Kohan - Dim Jio~~ 20510 Georgia Ave. N. (see attached)

2. Wendy S. Chalberg 20890 Georgia Ave. N. F.L.T.

Scott R. Chalberg 20890 Georgia Ave N.F.L.T

3. Richard J. Kelly Jr 20880 GEORGIA AVE. NO., F.L.T.

Shawna Kelsey 20880 GEORGIA AVE. NO., F.L.T.

EXHIBIT C

REC'D. BY APR 28 1999
MME

Property Owner(s) Signature (all owners must sign) Address

1 Kathleen Damon 21621 Healy Avenue

Frank Damon 21621 Healy Ave N

2 Mary Johnson 7487 213rd St N FL

Steve Johnson 7487 213rd St N. FL

EXHIBIT C

REC'D. BY APR 28 1988
MMB

Property Owner(s) Signature (all owners must sign) Address

1 Sharon Palas - 21965 Eden Ave N

Marquette Jean - ~~253 D.W. 3rd~~ D. 40 Acres

Bue Jean - ~~253 D.W. 3rd~~ St

2 Tyndal Jean 40 A. FL. TSP

W. T. Jean 40 A.

2

EXHIBIT C

REC'D BY APR 28 1957
MME

Property Owner(s) Signature (all owners must sign) Address

1 Philip P. Peck 21370 Hookstra Ave N., F.L.
Bob H. Ruck "

2 Walter Kelly 21365 Hookstra Ave No. F.L.

Julio A. Kelly " " " "

EXHIBIT C

REC'D. BY APR 28 1996
MAB

Property Owner(s) Signature (all owners must sign) Address

1 Earl M. Lellman, 7241 North Shore Trail, Forest Lake, MN 55025

2 Jay W. Lisch 7251 North Shore Trl, Forest Lake MN 55025

Multiple horizontal lines for additional signatures and addresses.

EXHIBIT C

REC'D BY APR 28 1987
M.L.R.

Property Owner(s) Signature (all owners must sign) Address

1 ~~John~~ Bruce Hornum 21890 Ideal Drive
Forest Lake

2 Gault Laura F. Scholl 6581 N. SHORE TRAIL
FOREST LAKE

3 ~~John~~ 6563 Northshore Trail
Forest Lake MN.

Audith Prida 6563 No Shore Trail
Forest Lake 55025

SAME
How started
3

EXHIBIT C

REC'D. BY APR 28 1996
M.M.P.

Property Owner(s) Signature (all owners must sign) Address

1 Jean Leikat 20920 Heath ave N Forest Lake

2 Mabel Mattson 21955 Finley Ct N. " "

W D J Mattson 21955 Finley CT N.

3 Michelle Mudeau-Spanjers 8755 212th St. Ct. N.

John Spanjers 8755 212th St Ct N

David Leikat 20920 Heath Ave N Forest Lake

EXHIBIT C

REC'D. BY APR 28 1998
M.M.B.

Property Owner(s) Signature (all owners must sign) Address

Christal M. Johnson 7900 180th St. N.

[Signature]
Robin Rosdner 18225 Imperial Ave. No.

[Signature]
Chris Hebert 18280 Harrow Ave No.

Larry Hebert

3

6

EXHIBIT C

REC'D. BY APR 28 1999
MAB

Property Owner(s) Signature (all owners must sign) Address

1 Richard D. Dyer } 21580 Healy Ave Ct N Forest Lake
Lona Hofstede }

21580 Healy Ave Ct. No. Forest Lake

* Steve Heller 1032 15th St SE

Charles H. Hannon " "

2 Carol Ruper 21040 Forest Bl, FL.

Robert T. Ruper " "

3 Chantal D. Dyer 21356 Healy Ave, Forest Lake

EXHIBIT C

REC'D BY APR 28 1999
MMB

Property Owner(s) Signature (all owners must sign) Address

1 Donald Ruber 9626 209th St. No.

Susan M. Ruber 9626 209th St. No.

2 Clyde T. Boyer 8993 North Shore Trail, Forest Lake, MN 55025
(SOLE OWNER)

3 Tom A. Kozl 9704 Suniper Ct. N. Forest Lake
MN 55025

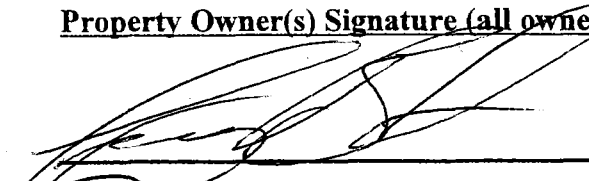
Scott A. Kozl 9704 Suniper Ct. N.

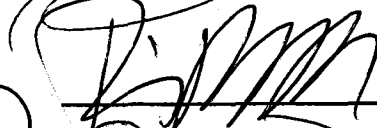
EXHIBIT C

REC'D BY APR 28 1998
M.M.B.

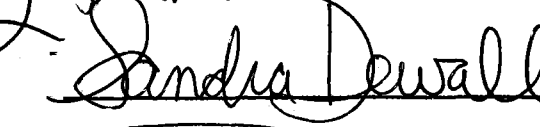
Property Owner(s) Signature (all owners must sign)

Address 21670 HEALY CRL

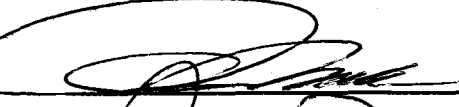
1  Anna M. Baker

2  Sandra Dewall

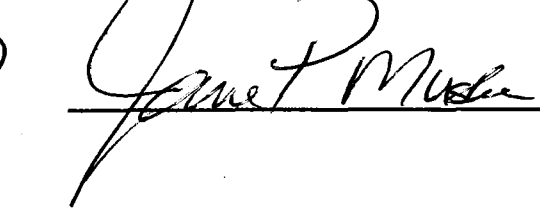
7373 233rd St. N.

3  Janet M. Miller

7373 233rd St. N.



6533 North Shore Trl.



6533 North Shore Trl.

EXHIBIT C

REC'D. BY APR 28 1995
MMB

Property Owner(s) Signature (all owners must sign) Address

1. Kathryn K. Shan-Dingler 20510 Georgia Ave. N (see attached)

Joseph V. Hingli 20510 Georgia Ave. N

2. ~~John A. Armenta~~ 20800 Glenbrook Ave No.

~~John A. Armenta~~ 20800 Glenbrook Ave No.

3. Renee Grasso 20820 Glenbrook Ave N.

Ron Farrell 20847 Glenbrook Ave CT

EXHIBIT C

REC'D. BY APR 28 1994
M.M.

Property Owner(s) Signature (all owners must sign) Address

Dale K. Fujimura	22510 Jason Ave. N, F.L.
Nancy K. K.	22510 Jason Ave. N. FL.
Jeff Brooks	9472 219 th ST N FL TOWNSHIP.
Andre L. Brooks	9472 219 th ST N FL TOWNSHIP
Kenneth E. Johnson	23920 July ave. no.
Cynthia Johnson	23920 July ave no Semdia, D.L. Township.

Property Owner(s) Signature (all owners must sign) Address

- 1 Donald C. Bergberg 1007 SE. 12th St Forest Lake
Near N Shore Circle 7580 N Shore Circle
Jean M. Bergberg 1007 12th Ave SE Forest Lake
Forest Lake, MN 55025
- 2 Robert M. Huest 21360 Fondant Ave No.
Marys M. Huest Forest Lake, MN 55025
- 3 Mary G. Tschel 21340 Fondant Ave
Forest Lake, MN 55025
- 4 Scott F. Kungur 21380 Fondant Ave
Forest Lake, MN 55025
- Ab Kungur 21380 Fondant Ave
Forest Lake, Mn. 55025

EXHIBIT C

REC'D. BY APR 28 1959
MAB

	Property	Owner(s)	Signature (all owners must sign)	Address
		Carl P Graf	<i>[Signature]</i>	21310 Fondant Aug
1		Shirley J Graf	<i>[Signature]</i>	Forest Lake MN 55025
		Ellen Kay Erickson	ELLEN K ERICKSON	21270 Fondant Ave N.
2		Rodney Erickson	RODNEY ERICKSON	21270 FONDANT Ave No.
		Leland Bissinger	Leland BISSINGER	21325 FONDANT Ave N
3		Anita Bissinger	Anita BISSINGER	21325 FONDANT Ave N
		Lilly Olson	Lilly OLSON	21420 N. Fondant Ave N.
4		Keith Olson	Keith OLSON	21420 N. Fondant Ave N.
		Harold Pritchey	HAROLD PRITCHEY	21600 FONDANT
5		Susy Pritchey	Susy PRITCHEY	21600 FONDANT

5

EXHIBIT C

REC'D BY APR 28 1995
MMS

Property Owner(s) Signature (all owners must sign) Address

- 1 Mire Aschenbrenner
Mary C. Aschenbrenner 9681 221st Street N, FL
- 2 Paul Madnick 9650 223 St N, FL.
Becky Madnick 9650 223rd St N.
- 3 Lynne Johns 9740 221st St No
~~Patricia Letts 9760 221st St No~~
- 4 Suzanne Ruyker 9
Steve M. Ruyker 9745 221st St N.
- 5 Mary Boersma
Donald Boersma 9615-223rd St N.
- 6 John Deed 9687 223rd St.
- 7 Scott Quint
Virgil Gustesen 9710 223rd St.
- 8 Sharon Gunn 2781 Keathur Ave N.

8

EXHIBIT C

REC'D BY AFB 28 1988
MM

Property Owner(s) Signature (all owners must sign) Address

- 1 Richard La Mere Datura's D & M 8849 N SHORE TR
55025
- 3 Richard Reinhardt 9074 N. SHORE TR
- 2 Sharon A Abbott 9517 North Shore Tr
John C. Abbott 9517 No Shore Trail
- 4 Anna Kops 8839 Northshore Trl.
Steve Kops 8839 Northshore Trl.
- 5 Lynn M Roberts 7104 218th St
Blaine Robert 7104 218th St
- 6 Ben Winnick 20555 Ingersoll
- 7 Ed Joche 23695 July Ave N
- 8 Ordona Feil 8823 N. Shore Trail FL
Pam Feil 8823 N. Shore Trail FL.

9

EXHIBIT C

REC'D. BY
MMS APR 28 1991

Property Owner(s) Signature (all owners must sign) Address

- 1 Janice Lambolt 21974 Ideal Ave Fl.
- 2 Kathy M. Koch 22035 Iden Ave. N. FL.
M. Koch 22035 IDEN AVE. N. F.L.
- 3 Sandra Jones 7674 Helo Ln. FL
Miss Roberts " " " "
- 4 Robt Eschen 21295 Harrow Ave N - FL
Linda Eschen 21295 Harrow Ave N. FL.
- 5 Janice Johnson 9196 Jewel Lane FL
Ann D 9196 Jewel Lane FL.
- 6 Anna L. Charles 5796 180th St. N. Hugo
Donald J. Charles " " " "
- 7 Bill Bresin 21363 Inwood Forest Lakes mn
Valerie Bresin " " "
- 8 Gail L. Brandt 4780 N. 190th St Forest Lake, mn

EXHIBIT C

REC'D. BY APR 28 1988
M.M.B.

Property Owner(s) Signature (all owners must sign) Address

Calvin B. J.

Greg Kunkel 7795 214th ST N Forest Lake, MN
" " " 55025

Shelly S Fienholz

9

EXHIBIT C

REC'D. BY APR 28 1999
MVA

Property Owner(s) Signature (all owners must sign) Address

Michele Lane 21311 Heath Ave N
Forest Lake MN 55025
651-464-6671

Richard J. Ferraro 21321 Heath Ave N.

Shawn J. Ferraro 21321 Heath Ave. N.
Forest Lake, MN 55025

CITY OF FOREST LAKE
RESOLUTION NO. 4-7699-3

WHEREAS, more than one hundred (100) property owners of the Town of Forest Lake filed a petition in October 1997 with the Minnesota Municipal Board requesting annexation of Forest Lake Township to the City of Forest Lake; and

WHEREAS, the Town of Forest Lake filed a petition in 1998 with the Minnesota Municipal Board requesting incorporation of the Town; and

WHEREAS, both petitions were dismissed on April 6, 1998 by agreement of the parties with the understanding that the parties would proceed with the preparation of a plan for cooperation and combination under Minnesota Statutes §465.81 to §465.88; and

WHEREAS, the Town Board and City Council have met monthly since May of 1998; and

WHEREAS, there has been no meaningful progress toward the development of a plan for cooperation and combination; and

WHEREAS, the City of Forest Lake has now withdrawn from the planning process; and

WHEREAS, the City Council has now been presented with a new petition for annexation of the Town of Forest Lake to the City of Forest Lake; and

WHEREAS, the Town of Forest Lake and the City of Forest Lake share, in substantial part, a common boundary; and

WHEREAS, the City and Township are parties to numerous joint powers agreements including agreements relating to fire protection, senior center and lake improvement; and

WHEREAS, the Township is in need of sewer, water, police and other municipal services

EXHIBIT C

REC'D. BY APR 28 1999
M M B

which may more easily, efficiently and less expensively be extended to certain areas of the Town than if new systems are to be established by the Town; and

WHEREAS, the City has the capacity to extend needed services to the Town; and

WHEREAS, annexation would eliminate County control over Township planning and make available to the Township, State Aid Road Funds and economic development tools; and

WHEREAS, the City and Town are in need of unified planning, zoning and subdivision regulations to meet ongoing growth pressures and to preserve and enhance the quality of life presently existing in the two municipalities; and

WHEREAS, unified planning would permit orderly development and still maintain a more rural lifestyle in areas not yet ready for development; and

WHEREAS, the City and Town are in effect one community; and

WHEREAS, the Town is now or is about to become urban or suburban in character; and

WHEREAS, annexation would have little, if any, adverse fiscal impact on the City or the Town; and

WHEREAS, it is in the best interest of the City and the Town that the City and Town become one merged Community.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF FOREST LAKE, MINNESOTA, that the City Council does hereby support the petition of the landowners for annexation of the Town into the corporate limits of the City of Forest Lake.

Adopted by the City Council of the City of Forest Lake this th day of April, 1999.

ATTEST:


Charles F. Robinson City Administrator

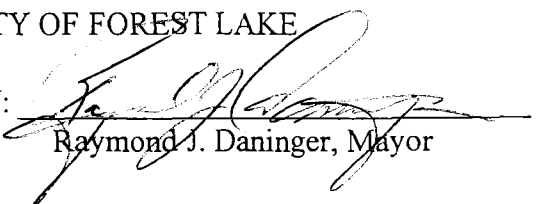
CITY OF FOREST LAKE
BY: 
Raymond J. Daninger, Mayor

EXHIBIT C

REC'D BY APR 28 1999
MMS

Dated: 4-26-99

(Signatures of City Mayor and City Clerk,
or Town Chair and Town Clerk, or Property
Owners)

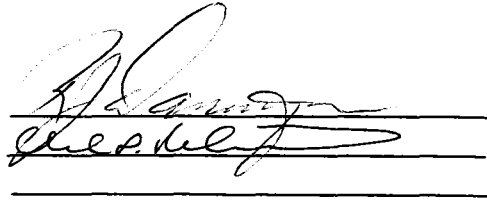


EXHIBIT D

REC'D. BY
M M B MAY 19 1999

Resolution No. 1999-5-137

**RESOLUTION CALLING FOR THE ANNEXATION OF
CERTAIN LANDS WITHIN THE LIMITS OF THE
TOWN OF ST. AUGUSTA TO THE CITY OF ST. CLOUD**

WHEREAS, the City of St. Cloud believes that annexation of certain lands within the Town of St. Augusta to the City of St. Cloud would best serve the interests of the residents of that property; and

WHEREAS, the City of St. Cloud and the Town of St. Augusta are currently discussing proposals regarding annexation and incorporation of territory within the Town. Those discussions require time and considerable effort by both units of government if a resolution is to be achieved. A request to incorporate, initiated by the Town, is currently pending before the Minnesota Municipal Board. Without assurances that the pending request can be continued, the City must proceed with this request to annex certain territory.

WHEREAS, the boundaries of the territory proposed for annexation are shown on the attached map identified as exhibit A.

WHEREAS, the names of all parties entitled to notice pursuant to Minn. Stat. Sec. 414.09 are:

The Town of St. Augusta – Harlan Jopp, St. Augusta Township Clerk, 1914 250th Street, St. Cloud, MN 56301

The Town of Lynden – Del Moeller, Lynden Township Clerk, 20979 County Road 44, Clearwater, MN 55320

The Town of Rockville- Pierre Hansen, Rockville Township Clerk, Box 324, Rockville, MN 56369

The City of Waite Park- City Clerk, 19 13th Avenue North, Waite Park, MN 56387

The County of Stearns- George Rindlelaub, County Administrator, Administration Center, St. Cloud, MN 56303

The St. Cloud Area Planning Organization – 1040, County Road 4, St. Cloud, MN 56303

The St. Cloud Area Joint Planning District – George Rindlelaub, County Administrator, Administration Center, St. Cloud, MN 56303

①

EXHIBIT D

REC'D. BY
M/M/B MAY 19 1999

WHEREAS, the reasons for this annexation request include:

- The territory proposed for annexation is contiguous to the City of St. Cloud and within St. Cloud's likely growth corridor. Portions of the Town of St. Augusta are already subject to an orderly annexation agreement. The development of land within the orderly annexation area is increasing rapidly. The annexation of these lands and extension of municipal services is occurring in a similar manner.
- The City of St. Cloud is best able to meet all the municipal services needs of the territory, now and into the future.
- The City of St. Cloud is cooperating in the development of a major industrial park development that is immediately contiguous to territory proposed for annexation. Lands within the territory proposed for annexation will be necessary to meet the needs of this industrial park. Those needs include land for an interchange on I-94. This industrial park and its tenants are already having regional and statewide impacts.
- The City of St. Cloud has been contacted by owners of lands within the territory proposed for annexation. These landowners wish to be annexed to the City of St. Cloud. They believe their needs are best met through such an annexation. These landowners have expressed a desire to individually petition the Municipal Board for the purpose of annexing their lands to the City of St. Cloud. St. Cloud is prepared to support and assist those efforts.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE COUNCIL OF THE CITY OF ST. CLOUD:

That the City Administration is authorized to submit this resolution requesting the annexation of the territory within the Town of St. Augusta, shown on the map attached as exhibit A, to the City of St. Cloud. The City Administration shall wait until Thursday, May 13, 1999 to file the resolution with the Minnesota Municipal Board. If, prior to that date, the City of St. Cloud is given assurances by the Town of St. Augusta that their current proceedings to incorporate the Town of St. Augusta will be continued at least 90 days with the record kept open, this resolution shall not be immediately filed. Assurances shall include verification that the Minnesota Municipal Board will grant the continuance. It is anticipated that at least 90 days is necessary to discuss and resolve the concerns of the City and the Town.

Adopted this 17th day of May, 1999.

EXHIBIT D

RECD. BY
MAY 18 1999

The following described land in St. Augusta Township, Stearns County, Minnesota:

Parcel One

That part of Section 1, Township 123, Range 28, that lies westerly of the following described line:

Beginning at the point where the east right-of-way line of Stearns County Highway 75 (formerly State Highway 152) intersects with the north boundary of St. Augusta Township; thence south along said east right-of-way line of said Highway 75 to the point of intersection with the east right-of-way line of Stearns County Highway 7; thence south along said east right-of-way line of Stearns County Highway 7 to the point of intersection with the south line of said Section 1, and there terminating.

Parcel Two

All of Sections 2, 3, 4, 5 and 6 of Township 123, Range 28.

Parcel Three

All that part of Sections 8, 17, and 18 Township 123, Range 27 that lie westerly, southerly and easterly of the following described line:

Beginning at the point where the east right-of-way line of Interstate Highway 94 intersects the north line of said Section 18; thence south along said east right-of-way line of Interstate Highway 94 to the point of intersection with the east right-of-way line of Stearns County Highway 75; thence south along said east right-of-way line of Stearns County Highway 75 to the south line of Lot 2, Block 3, ST.CLOUD I-94 BUSINESS PARK, according to the recorded plat thereof; thence easterly along the south line of said Lot 2, Block 3 to the east line of said Section 18; thence north along the east line of said Section 18 to the northeast corner thereof; thence continuing north along the east line of Section 8 on an assumed bearing of North 0 29'20" West, to the southwest corner of Government Lot 2 of said Section 8; thence North 88 24'46" East, 759.96 feet; thence North 46 22'28" East, 780 feet, more or less, to a point in the east line of said Government Lot 2; thence north along said east line to the point of intersection with the thread of the Mississippi River, and there terminating.

The total area of the proposed annexation is 6.69 square miles (4282 acres), more or less.

EXHIBIT D

REC'D. BY MAY 18 1999
M.A.P.



TOWNSHIP: 123 N

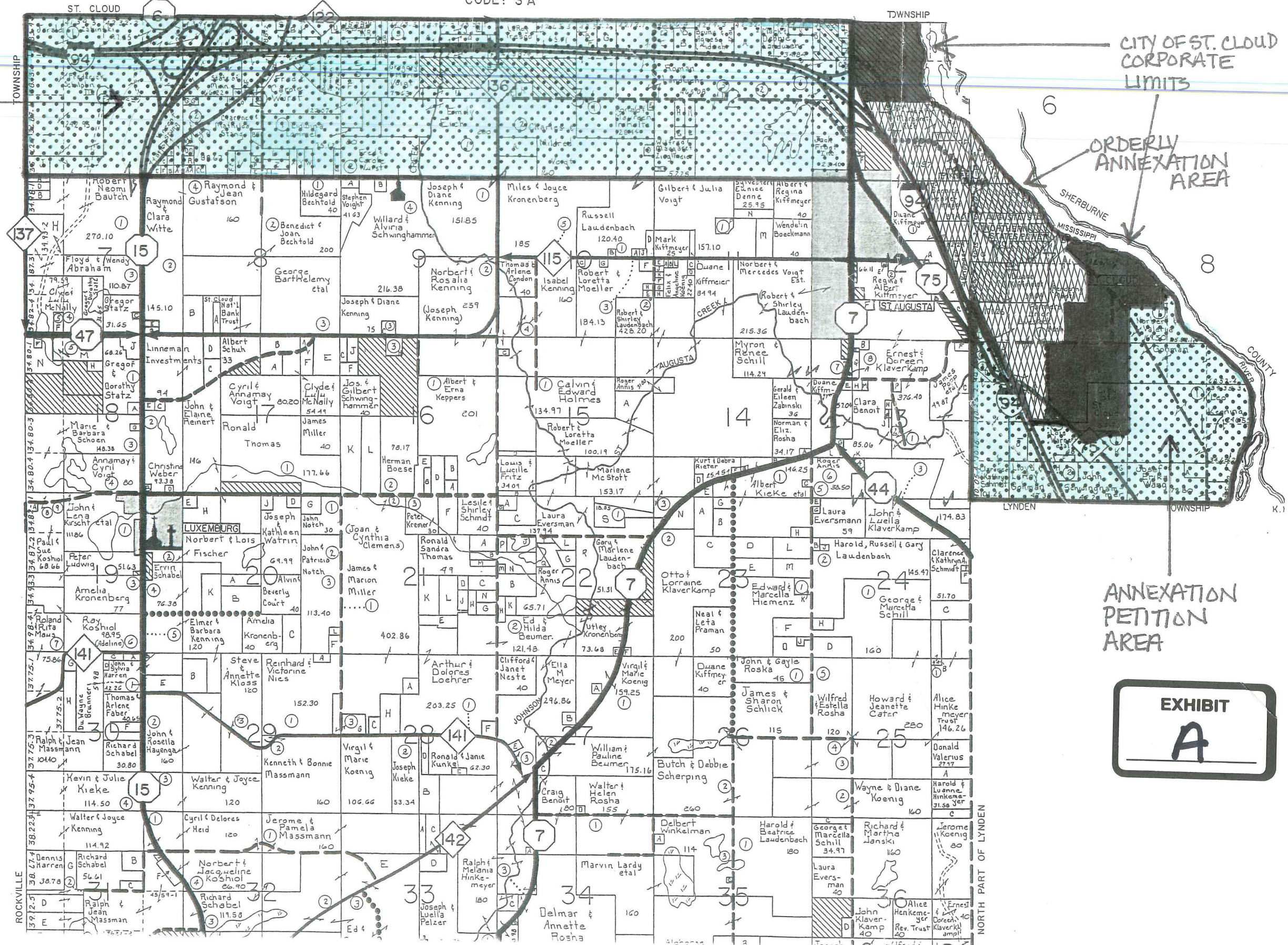
CODE: S A

RANGE: 28 W



TOWNSHIP: 123 N

ANNEXATION
PETITION
AREA



CITY OF ST. CLOUD
CORPORATE
LIMITS

ORDERLY
ANNEXATION
AREA

ANNEXATION
PETITION
AREA

EXHIBIT
A

EXHIBIT D

REC'D. BY MAY 18 1999
M.A.B.

TOWNSHIP LOCATION

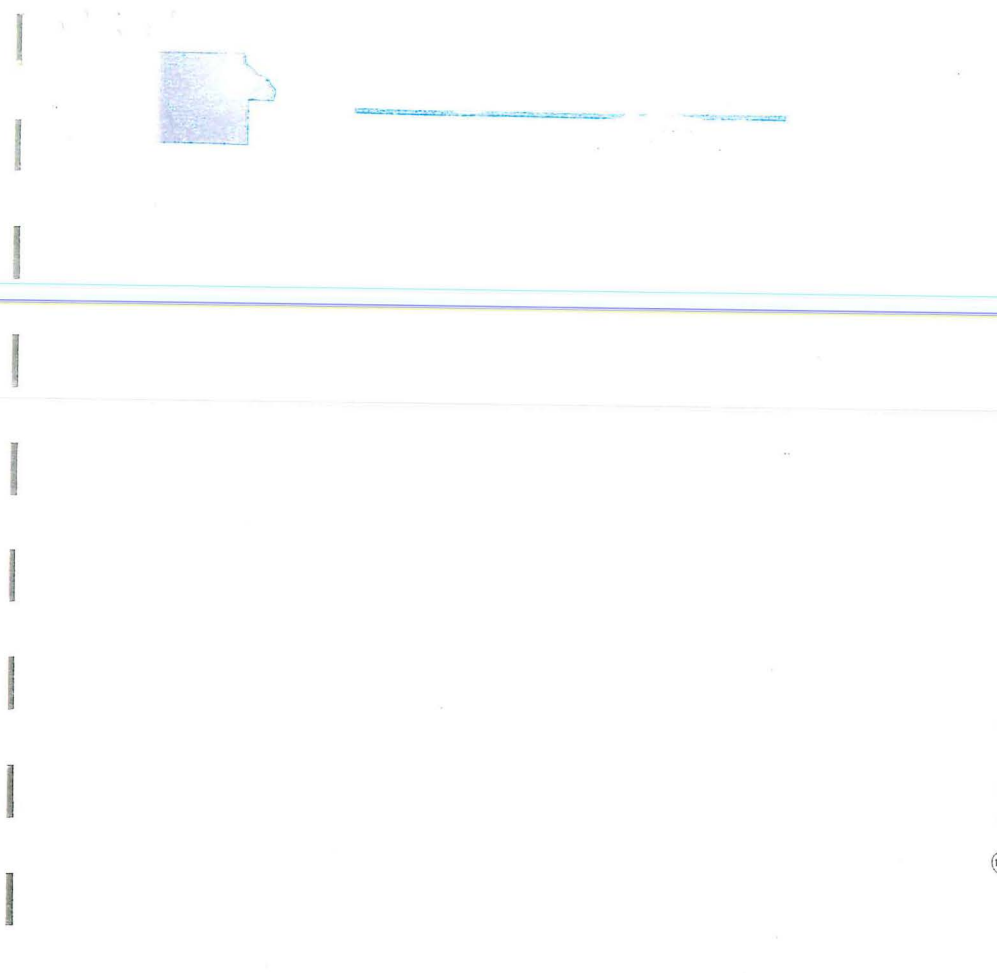
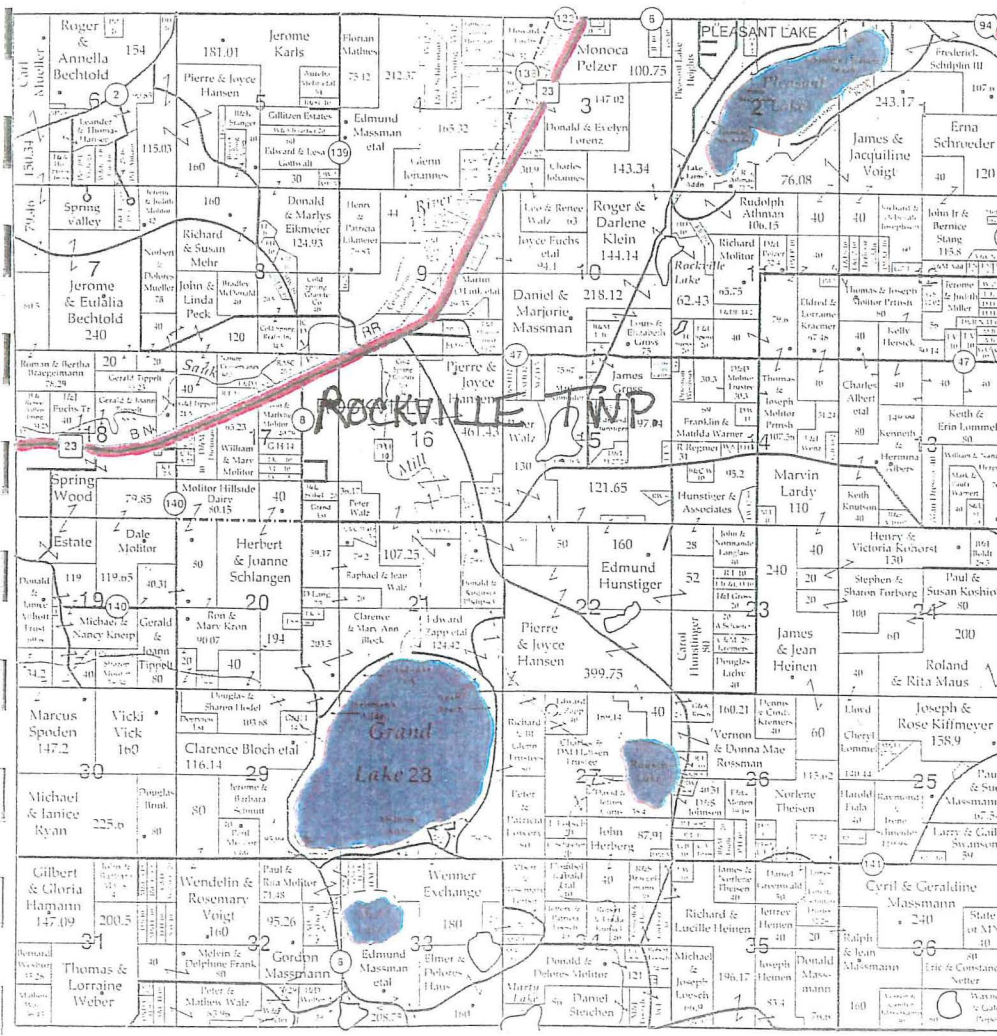
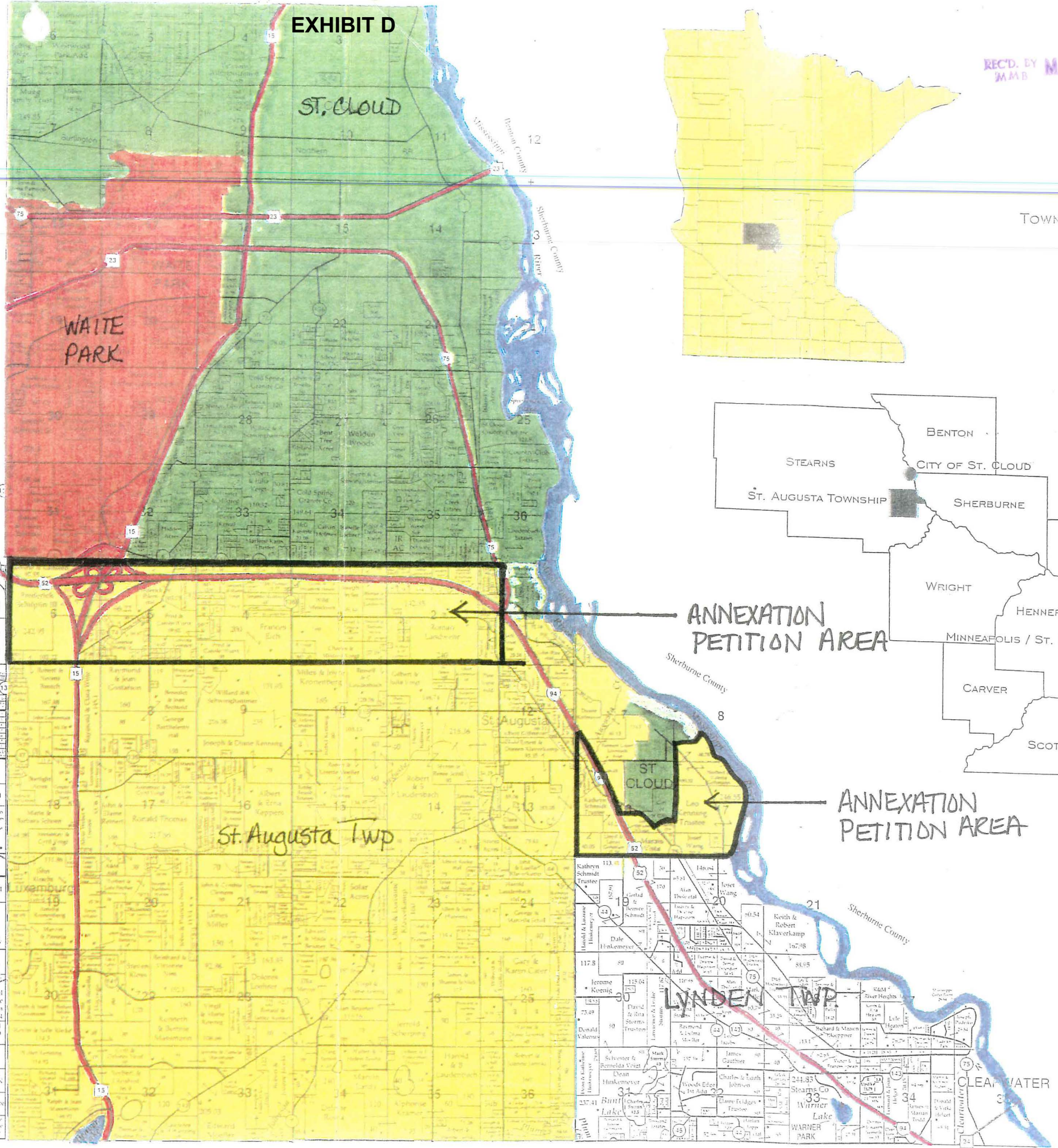
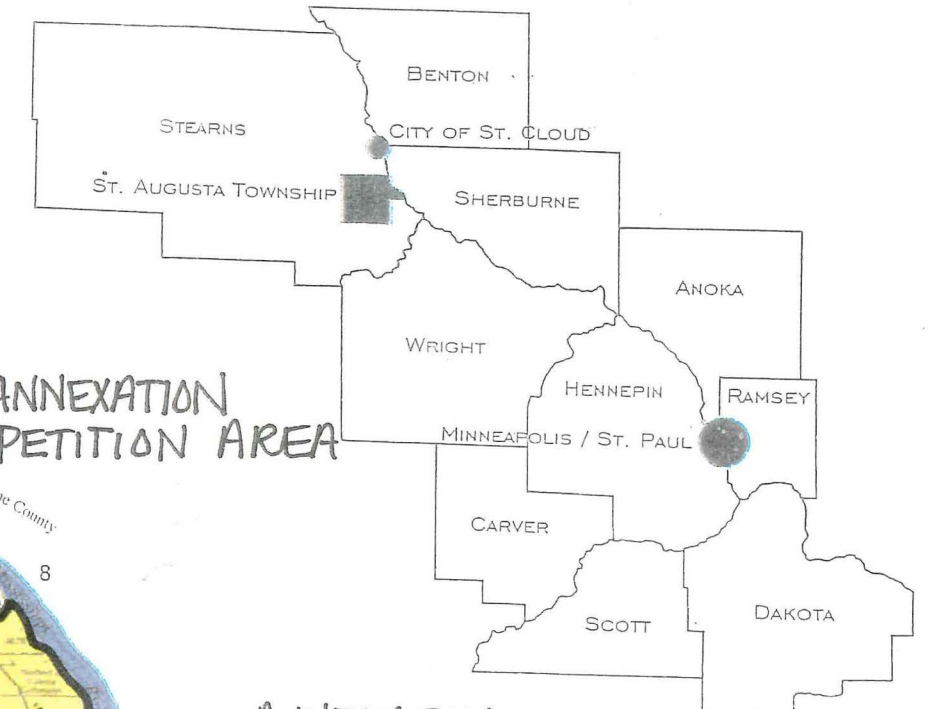
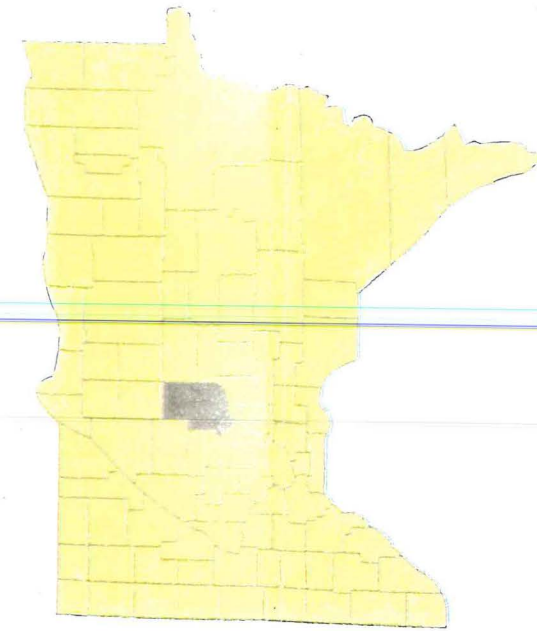


EXHIBIT E

This Order has been scanned using optical character recognition. The document has many scanning errors. The imaged copy of the actual order is available in PDF format using this link. [Imaged St. Augusta Order](#)

10-2900-12548-2

STATE OF MINNESOTA

OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE OFFICE OF STRATEGIC AND LONG RANGE PLANNING

In re the Petition of St. Augusta Township

for Incorporation (City of Neenah, 1-65) **FINDINGS OF FACT,**

In re the Petition for Annexation of **CONCLUSIONS OF LAW,**

Unincorporated Adjoining Territory to the **AND ORDER**

City of St. Cloud (Schilplin 46107)

In re the Petition for Annexation of

Unincorporated Adjoining Territory to the

City of St. Cloud (St. Cloud, A-6108).

The above-entitled matter came on for hearing before Administrative Law Judge Kenneth Nikolai commencing at 9:30 a.m. on January 3, 2000 and continuing through January 13, 2000, at the St. Augusta Town Hall in St. Augusta Township, Minnesota. Post-hearing briefs were submitted on February 11, 2000. The record closed on February 11, 2000.

Michael C. Couri, Esq., Couri and MacArthur Law Office, 705 Central Avenue East, Rm. 309, St. Michael, MN 55377, appeared on behalf of St. Augusta Township. Christopher Dietzen, Esq., Larkin, Hoffman, Daly & Lindgren, Ltd., 1500 Norwest Financial Center, 7900 Xerxes Avenue South, Bloomington, Minnesota, 55431-1194, appeared on behalf of the City of St. Cloud. Gordon H. Hansmeier, Esq., 11 Seventh Avenue North, P.O. Box 1433, St. Cloud, Minnesota, 56302, appeared on behalf of Frederick Schilplin. Gerald W. Von Korff, Esq., Rinke Noonan, Ltd., Suite 700, Norwest Center, P.O. Box 1497, St. Cloud, Minnesota 56302-1497, appeared on behalf of RCH Partnership.

NOTICE

This order is the final administrative decision in this case under Minn. Stat. § 414.02, 414.031, 414.11, 414.12 and the Order of the Commissioner of Administration dated September 29, 1999. Any person aggrieved by this Order may appeal to Stearns County District Court by filing an Application for Review with the Court Administrator within 30 days of the date of this Order.¹

Any party may submit a written request for an amendment of these Findings of Fact, Conclusions of Law and Order within seven days from the date of the mailing of this Order.² Minn. Stat. § 414.07, subd. 2.

No request for an amendment, however, shall extend the time of appeal from this Order.

STATEMENT OF ISSUES

The issue in this proceeding is whether the petitions for annexation and incorporation

EXHIBIT E

should be granted or denied based upon the factors set out in statute.³

FINDINGS OF FACT

Procedural History

1. In August of 1974, St. Augusta Township and the City of St. Cloud entered into an orderly annexation agreement covering specified Township land located east of Interstate-94.

2. On January 14, 1999, St. Augusta Township filed a petition for incorporation as the City of Neenah (Petition 1-65) pursuant to Minn. Stat. § 414.02. The petition contained all of the information required by statute, including a description of the territory for incorporation, which is as follows:

Sections 1 through 36, all inclusive, situated in T 123, R 28: less and except that portion of Section 1, T 123, R 28 lying within the corporate limits of the City of St. Cloud.

AND

That portion of Sections 6,7,8, 17 and 18 situated in T 123, R 27 lying west of the Stearns-Sherburne County border and located in Stearns County; less and except therefrom all portions thereof lying within the corporate limits of the City of St. Cloud.

AND, LESS AND EXCEPT

The following described orderly annexation area in St. Augusta Township, Stearns County, Minnesota, as per the 1974 joint resolution for orderly annexation between the City of St. Cloud and St. Augusta Township:

Beginning at the point where the east right-of-way of Highway 152 intersects with the north boundary of St. Augusta Township; thence south along said right-of-way to the point of intersection with the east boundary of the east right-of-way of Interstate Highway 94; thence south along said east right-of-way of Interstate 94 to the point of intersection with the south line of the SE ¼ of the NW ¼ of Section 18, T 123N, R 27W; thence east along said south line to a point 109.4 feet east of the southwest corner of the SE ¼ of the NE ¼; thence north 109.4 feet distant and parallel with the west line of said SE ¼, NE ¼ to its north line; thence easterly along said north line to the east line of Section 18; thence north to the northeast

²Minn. Rule pt. 6000.3100.

Minn. Stat. § 414.02, 414.031.

St. Augusta Township has subsequently filed a motion to amend the proposed name of the city to the

City of Ventura.

2

corner Section 18; thence continuing north, along the east line of Section 8, on an assumed bearing of N 0° 29' 20" west to the southwest corner of Government Lot 2; thence N 88° 24' 46" East 759.96 feet; thence N 46° 22' 28" East, 780 feet, more or less, to a point in the east line of said Government Lot 2; thence north along said east line to the point of intersection to the thread of the Mississippi River; thence north along said thread to the point of intersection with the north boundary of St. Augusta Township; thence west along said north boundary to the point of beginning.

3. On March 11 and 12, 1999, the former Minnesota Municipal Board ("Board") conducted hearings on Saint Augusta Township's petition for incorporation. The City of St. Cloud and property owner Frederick Schilplin participated as parties in the hearings.

EXHIBIT E

At the end of the hearing on March 12, 1999, the Board agreed to hold the record open for the introduction of further evidence. Specifically, the Board anticipated receiving by June 11, 1999, the preliminary report of the St. Cloud Area Joint Planning Board (“Joint Planning Board”).⁵ The Board Chairman instructed the parties at the close of the March hearing to let the Board know by June 18, 1999 if they would like further hearing time. (Hultgren [mbt vol. II]6 at 268).

4. On May 17, 1999, the Minnesota Legislature passed a bill terminating the Municipal Board effective June 1, 1999.

5. On May 18, 1999, Frederick Schilplin and RCH Partnership (“RCH”) filed a petition with the Board requesting that property they own in Saint Augusta Township be annexed to the City of St. Cloud (A-6107). The petition contained all of the information required by statute, including a description of the territory for annexation, which is as follows:

TRACT “F”

That part of the South Half of the North Half and that part of the Southwest Quarter of Section 6, Township 123 North, Range 28 West, Stearns County, Minnesota, described as follows:

Beginning at the west quarter corner of said Section 6; thence North 00 degrees 19 minutes 24 seconds East on an assumed bearing along the west line of the Southwest Quarter of the Northwest Quarter of said Section 6, a distance of 880.07 feet to the right-of-way line of Interstate Highway 1-94; thence South 89 degrees 40 minutes 28 seconds East,

right-of-way line 49.93 feet; thence North 00 degrees 19

The Joint Planning Board was established through an eight-party joint powers agreement between the cities of St. Cloud, St. Joseph, Sartell, Sauk Rapids, and Waite Park, and the counties of Benton, Sherburne and Stearns. The Board is charged with developing a community based comprehensive plan for the district including all unincorporated areas in the three counties. The Minnesota Legislature awarded the Joint Planning Board a \$350,000 grant to carry out its community-based planning. Among other concerns, the Board considered affordable housing, transportation and wastewater treatment issues. The citation [mbt] refers to the municipal board hearing transcript.

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minutes 32 seconds East, along said right-of-way line 97.14 feet; thence northerly and northwesterly 531.38 feet, along said right-of-way line and along a tangential curve concave to the southwest having a radius of 931.47 feet and a central angle of 32 degrees 41 minutes 09 seconds; thence North 49 degrees 42 minutes 02 seconds East, along said right-of-way line 128.53 feet; thence South 77 degrees 00 minutes 26 Seconds East, along said right-of-way line, along said 1408.99 feet; thence South 80 degrees 59 minutes 54 seconds East, along said right-of-way line

671.79 feet; thence North 88 degrees 49 minutes 11 seconds East, along said right-of-way line 655.51 feet; thence South 86 degrees 48 minutes 17 seconds East, along said right-of-way line 501.60 feet; thence South 74 degrees 40 minutes 48 seconds East, along said right-of-way line 313.21 feet; thence South 52 degrees 43 minutes 08 seconds East, along the westerly right-of-way line of Minnesota Trunk Highway 15, a distance of 384.19 feet; thence South 26 degrees 49 minutes 48 seconds East, along the last described right-of-way line 504.54 feet; thence South 03 degrees 08 minutes 44 seconds East, along the last

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described right-of-way line

242.49 feet; thence South 14 degrees 50 minutes 25 seconds West, along the last described right-of-way line 291.01 feet to the south line of said South Half of the North Half; thence North 86 degrees 54 minutes 27 seconds West, along said south line 1492.81 feet to the northeast corner of said Southwest Quarter; thence South 03 degrees 53 minutes 42 seconds West, along the east line of said Southwest Quarter 2046.15 feet to its intersection with the easterly extension of the center line of an existing ditch; thence North 88 degrees 17 minutes 42 seconds west, along said easterly extension and along said center line 1604.78 feet; thence North 71 degrees 40 minutes 26 seconds West, along said center line 767.21 feet to its intersection with the west line of said Southwest Quarter; thence North 00 degrees 14 minutes 16 seconds East, along the last described west line 1885.56 feet to the point of beginning. Subject to the right-of-way of Stearns County Road 137 and easements of record. Containing 232.52 acres, more or less.

TRACT "G"

That part of the North Half of the Northwest Quarter of Section 5, Township 123 North, Range 28 West, Stearns County, Minnesota, described as follows:

Commencing at the northwest corner of said Section 5; thence South 89 degrees 22 minutes 20 seconds East on an assumed bearing along the north line of said North Half of the Northwest Quarter 976.61 feet to the easterly right-of-way line of Minnesota Trunk Highway 15 for the point of beginning of the land to be described; thence South 00 degrees 37 minutes 40 seconds West, along said right-of-way line 198.32 feet; thence South 21 degrees 15 minutes 44 seconds East, along said right-of-way line 337.80 feet; thence South 43 degrees 39 minutes 10 seconds East,

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along said right-of-way line 297.32 feet; thence South 72 degrees 36 minutes 03 seconds East, along the northerly right-of-way line of Interstate Highway 1-94, a distance of 528.11 feet; thence North 88 degrees 37 minutes 16 seconds East, along the last described right-of-way line 115.38 feet to its intersection with the west line of the east 658.85 feet of the Northeast Quarter of the Northwest Quarter of said Section 5; thence North 04 degrees 04 minutes 06 seconds East, along said west line 874.56 feet to the north line of said North Half of the Northwest Quarter; thence North 89 degrees 22 minutes 20 seconds West, along said north line 1006.96 feet to the point of beginning; Subject to the right-of-way of Stearns County Road 6 and easements of record. Containing 16.11 acres, more or less.

TRACT "H"

That part of the Southeast Quarter of the Northeast Quarter of Section 6, Township 123 North, Range 28 West and that part of the Northwest Quarter of Section 5, Township 123 North, Range 28 West, Stearns County, Minnesota, described as follows:

Beginning at the east quarter corner of said Section 6; thence North 86 degrees 54 minutes 27 seconds West on an assumed bearing along the south line of said Southeast Quarter of the Northeast Quarter 520.01 feet to the easterly right-of-way line of Minnesota Trunk Highway 15; thence North 40 degrees 46 minutes 31 seconds East, along said right-of-way line 504.32 feet; thence North 46 degrees 57 minutes 57 seconds East, along said right-of-way line 321.26 feet to the east line of said Southeast Quarter of the Northeast Quarter; thence continue North 46 degrees 57 minutes 57 seconds East,

EXHIBIT E

along said right-of-way line 175.03 feet; thence North 58 degrees 02 minutes 47 seconds East, along said right-of-way line 771.77 feet; thence North 69 degrees 19 minutes 52 seconds East, along the southerly right-of-way line of Interstate Highway 1-94, a distance of 529.74 feet; thence North 73 degrees 54 minutes 47 seconds East, along the last described right-of-way line 413.55 feet; thence North 80 degrees 05 minutes 25 seconds East, along the last described right-of-way line 379.16 feet to its intersection with the west line of the east 658.85 feet of said Northwest Quarter; thence South 04 degrees 04 minutes 06 seconds West, along said west line 1548.57 feet to the south line of said Northwest Quarter; thence North 89 degrees 24 minutes 03 seconds West, along the last described south line 1984.45 feet to the point of beginning. Subject to easements of record. Containing 59.01 acres, more or less.

EXCEPT that part of the Southeast Quarter of the Northwest Quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section Five (5), in Township One Hundred Twenty-three (123), Range Twenty-eight (28), Stearns County, Minnesota, described as follows:

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Beginning at the intersection south line of said SE $\frac{1}{4}$ of NW $\frac{1}{4}$ with the northwesterly right-of-way line of County Road Number 74, formerly known as S.T.H. #15, said point being 859.01 feet more or less West of the southeast corner of said SE $\frac{1}{4}$ of NW $\frac{1}{4}$; thence northeasterly along said right-of-way line to a point that is 41.19 feet northeasterly of the intersection of said right-of-way line with the west line of the East 658.85 feet of said SE $\frac{1}{4}$ of NW $\frac{1}{4}$; thence northerly to the intersection of said west line of the East 658.85 feet with a line drawn northwesterly at right angles to said right-of-way line, from a point thereon distant 294.73 feet northeasterly of the intersection of said right-of-way line with the south line of said SE $\frac{1}{4}$ of NW $\frac{1}{4}$; thence northwesterly at right angles to said right-of-way line to a point that is 500.00 feet northwesterly of said right-of-way line; thence southwesterly, parallel with said right-of-way line, for 428.40 feet; thence southeasterly at right angles to said right-of-way line to the south line of said SE $\frac{1}{4}$ of NW $\frac{1}{4}$; thence easterly along said south line to the point of beginning, Stearns County, Minnesota.

That part of the Southeast Quarter (SE $\frac{1}{4}$), Section Six (6), Township One Hundred Twenty-three (123), Range Twenty-eight (28), Stearns County, Minnesota, which lies Easterly of the Westerly right-of-way line of State Trunk Highway No. 15, recorded as State Highway Right-of-way Plat No. 73-10, according to the plat and survey thereof on file and of record in the office of the Stearns County Recorder, LESS AND EXCEPT the following, to-wit: That portion lying South of former State Trunk Highway No. 15, now County State Aid Highway No. 74.

ALSO LESS AND EXCEPT: That part of the Southeast Quarter of the Southwest Quarter (SE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 6, Township 123, Range 28, described as follows, to-wit: Commencing at the Southeast corner of said Section 6, said corner is designated by a cast iron monument; thence North along the East line of said SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ (drawn from said cast iron monument, through a cast iron monument at the East Quarter corner of said Section 6), 1170.16 feet to the Northwesterly right-of-way line of State Trunk Highway No. 15; thence Southwesterly along said right-of-way line, deflecting to the left $131^{\circ} 3' 3''$ a distance of 551.09 feet to the point of beginning of the tract to be described; thence continue Southwesterly along said right-of-way line 144.00 feet; thence Northwesterly, at a right angle 250.00 feet; thence Northeasterly at a right angle 144.00

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feet; thence Southeasterly at a right angle 250.00 feet to the point of beginning.

ALSO LESS AND EXCEPT: That part of the Southeast Quarter of the Southeast Quarter (SE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 6, Township 123, Range 28, described as follows, to-wit: Commencing at the Southeast corner of said Section 6, said corner is designated by a cast iron monument; thence North along the East line of said SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ (drawn from said cast

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iron monument, through a cast iron monument at the East Quarter corner of said Section 6), 1170.16 feet to the Northwesterly right-of-way line of State Trunk Highway No. 15; thence Southwesterly along said right-of-way line, deflecting to the left $131^{\circ} 3' 3''$, a distance of 405.09 feet to the point of beginning of the tract to be described; thence continue Southwesterly along said right-of-way line 146.00 feet; thence Northwesterly, at a right angle 300.00 feet; thence Northeasterly at a right angle 146.00 feet; thence Southeasterly at a right angle 300.00 feet to the point of beginning.

6. On May 18, 1999, the City of St. Cloud submitted its petition and resolution requesting that certain property within Saint Augusta Township, including that owned by Schilplin and RCH, be annexed to St. Cloud pursuant to Minn. Stat. § 414.031. (A6108). The petition contained all of the information required by statute, including a description of the territory for incorporation which is as follows:

Parcel 1

That part of Section 1, Township 123, Range 28, that lies westerly of the following described line:

Beginning at the point where the east right-of-way line of Stearns County Highway 75 (formerly State Highway 152) intersects with the north boundary of St. Augusta Township; thence south along said east right-of-way line of said Highway 75 to the point of intersection with the east right-of-way line of Stearns County Highway 7; thence south along said east right-of-way line of Stearns County Highway 7 to the point of intersection with the south line of said Section 1, and there terminating.

Parcel Two

All of Sections 2, 3, 4, 5 and 6 of Township 123, Range 28.

Parcel Three

All that part of Sections 8, 17 and 18 Township 123, Range 27 that lie westerly, southerly and easterly of the following described line:

Beginning at the point where the east right-of-way line of Interstate Highway 94 intersects the north line of said Section 18; thence south along said east right-of-way line of Interstate Highway 94 to the point of intersection with the east right-of-way line of Stearns County Highway 75; thence south along said east right-of-way line of Stearns County Highway 75 to the south line of Lot 2, Block 3, ST. CLOUD 1-94 BUSINESS PARK, according to the recorded plat thereof; thence

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easterly along the south line of said Lot 2, Block 3 to the east line of said Section 18; thence north along the east line of said Section 18 to the northeast corner thereof; thence continuing north along the east line of Section 8 on an assumed bearing of North 0 29' 20" West, to the southwest corner of Government Lot 2 of said Section 8; thence North 88 24' 46" East, 759.96 feet; thence

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North 46 22' 28" East, 780 feet, more or less, to a point in the east line of said Government Lot 2; thence north along said east line to the point of intersection with the thread of the Mississippi River, and there terminating.

The total area of the proposed annexation is 6.69 square miles (4282 acres), more or less.

7. On June 1, 1999, the Municipal Board was terminated and all pending matters, including the above-referenced petitions, were transferred to the Office of Strategic and Long-Range Planning.

8. On September 29, 1999, the Commissioner of the Department of Administration issued a directive requiring that the work of the Office of Strategic and Long Range Planning related to the Saint Augusta Township and City of St. Cloud petitions be performed by the Office of Administrative Hearings. That directive required the Office of Administrative Hearings to: "[d]ecide all pending motions regarding Municipal Board docket numbers 1-65, A-6107 and A-6108. Decide any and all procedural matters that may be raised by the parties of record during the resolution of this proceeding. Review all evidence of record previously submitted by the parties of record. Conduct additional hearings as necessary and issue any orders, temporary and or final."

9. On November 1, 1999, a hearing was held on St. Cloud's motion to consolidate the annexation petitions with St. Augusta Township's incorporation petition, and motion for additional hearing.

10. On November 12, 1999, the Administrative Law Judge ("AU") issued an order consolidating the above-referenced petitions and requiring additional hearings be held on each petition.

11. On December 6, 1999, St. Augusta Township filed a motion for summary disposition. St. Cloud filed a memorandum in opposition to the Township's motion on December 17, 1999. The AU denied the Township's summary disposition motion by order dated December 23, 1999.

12. Due, timely and adequate legal notice of the hearing was published in the *St. Cloud Times*.

13. Additional hearings commenced on January 3, 2000 at the St. Augusta Township Town Hall and continued through January 13, 2000. The record closed on February 11, 2000.

14. The following findings are made pursuant to the requirements of Minn. Stat. § 414.02 and 414.031.

Saint Augusta Township's Petition for Incorporation

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Population

15. St. Augusta Township's population has grown from 2,169 in 1980 to 2,657 in 1990. The Township's present population is approximately 3,293 people, including

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approximately 236 people residing in the area proposed for annexation by the City of St. Cloud. Based on current patterns of development and absent municipal utility services, the Township's population is expected to increase to 4,208 by 2010 and to 4,892 by 2020. The Township's growth patterns have been influenced by its access and proximity to St. Cloud. (Garross [mbt vol. I] at 161, 172-173; MB Ex. 19 at 5-6, 9, II Ex. 208 at 2; Gartland at 202-203).

16. Fifty-seven percent of St. Augusta Township's working residents are employed in St. Cloud. (Gartland at 184).

17. The present number of households in St. Augusta Township is estimated at 1,060. According to the 1990 census, only 8 percent of the township's population live on farms. The remainder live in areas zoned residential. St. Augusta Township predicts that it will add 280 new households by the year 2010. And by 2020, the Township expects to have a total of 1,620 households. (Jopp [mbt vol. I] at 61; Garross [mbt vol. I] at 173; MB Ex. 19 at 5-6, 9; Ex. 208 at 3).

18. The rate of the St. Augusta Township's growth will depend in part on the availability of municipal sewer and water services. Once the Township has such services, the pace of development would be expected to increase even further from the current patterns. (MB Ex. 19 at 9).

19. The primary population centers in St. Augusta Township are located in the town sites of St. Augusta on the northeast side of the Township⁷, and Luxemburg on the west-central side of the Township⁸. In the St. Augusta town site there are currently 230 homes and 20 businesses. In addition, there are residential subdivisions located in the corridor connecting the two town sites. (Jopp [mbt vol. I] at 61; Jopp at 1057-59; MB Exs. 2, 8, 10).

20. The St. Augusta business park is located in the proposed annexation area on the north side of St. Augusta town site in section 1. The business park has eight buildings and its own private well water system. (Jopp at 1059; MB Ex. 10).

21. St. Augusta Township will see increased residential growth due to the opening of the New Flyer Bus manufacturing plant on the edge of St. Augusta Township in St. Cloud. The New Flyer plant is located in St. Cloud near the border of St. Augusta Township by Interstate 94 and County Road 75. The company currently employs approximately 400 people and may employ as many as 800 people if a second shift is added. (Garros [mbt vol. I] at 166-168; Mondloch [mbt vol. I] at 118; Hagelie at 991-996).

22. St. Augusta Township's population growth will continue to increase in the future due to the Township's land availability, proximity to I-94, and job opportunities within St. Cloud. (Garross [mbt vol. I] at 164-166; MB Ex. 31 at 1-3).

⁷Sections 1, 12 and 13 on MB Ex. 2.

⁸Sections 18 and 19 on MB Ex. 2.

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Quantification of land terrain, soil conditions

23. St. Augusta Township consists of approximately 24,354 acres or 37.8 square miles. (Shardlow at 69; Gartland at 160; Ex. 208).

24. The topography of the Township is characterized as fairly flat to rolling overall, with the eastern portion of the community being nearly level and gently increasing in elevation to the western boundary of the Township. A high point exists just to the northeast of the Luxemburg town site. (Twp. Ex. 11 at 75).

25. St. Augusta Township has sandy soils that are not well suited for septic system use. The majority of the soils in the Township are coarse textured and have rapid permeability which does not allow for proper absorption of septic system effluent. Specifically, the Township has Hubbard-Dickman Association, Dorset-Nymore Association and Cushing-Mahtomedi Association soils. Each of these types of soils are rated "severe" (poor filter) for septic tank absorption fields. If septic tank absorption fields are placed on Hubbard-Dickman soils, underground water supplies and nearby water bodies can become polluted. Likewise, there is a danger that ground water supply can become polluted if sanitary facilities are placed on Dorset-Nymore Association soils. (Garross [mbt vol. I] at 175-176; Bettendorf [mbt vol. I] at 222-223; Gartland at 162-163; Ex. 208 at 6; Popkens at 580; MB Exs. 18 and 19 at 17-21, 65).

26. The majority of the soils in the proposed annexation area are Hubbard-Dickman and Dorset-Nymore Association soils. In the western half of the proposed annexation area the predominant soil type is Hubbard-Dickman Association. And in the eastern half of the proposed annexation area, the land is roughly divided into equal portions of Dorset-Nymore and Hubbard-Dickman Association soils. Overall, the majority of the land abutting 1-94 consists of Hubbard-Dickman Association soils. (MB Ex. 18).

27. There are significant amount of wetlands and hydric soils in the northern portion of the Township, including the area immediately south of 1-94 in St. Cloud's proposed annexation area. (Shardlow at 45; Gartland at 159; Twp. Ex. 39, Ex. 208 at 6).

Present development pattern, land use and planning

28. The Township has drafted and enforced its own planning and zoning ordinances since 1972. The Township updated its comprehensive plan in 1995, its zoning ordinance in 1998, and its subdivision ordinance in 1999. (Jopp at 1074-1075).

29. In 1998, the land use of 85 percent of the property in St. Augusta Township was either agriculture or vacant/undeveloped. Approximately eight percent of township property was identified as low-density residential. And one percent of township property was identified as commercial or industrial use. The remaining six percent of township property was identified as lake, public/semi-public, or public-right-of-way. (Garross [mbt vol. I] at 191; MB Exs. 11 at 85, 19 at 13, 30-35).

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30. Currently about 1,938 acres of Township land (roughly 3 square miles) are in low-density residential use, and an additional 245 acres are in commercial/industrial use. (Garross [mbt vol. I] at 172; MB Ex. 19 at 30).

31. St. Augusta Township's planned land use for the majority of the area St. Cloud proposes to annex is agricultural. The Township has also planned for some commercial and some residential within the proposed annexation area. (Jopp at 1076; Ex. 12).

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32. St. Augusta Township has approximately 80 residential plats and 20 commercial plats. During the development of its comprehensive plan in 1995, St. Augusta Township placed a moratorium on new platting within the township. The Township's development moratorium lasted for about one year. In 1998, Stearns County placed an interim moratorium on all platting while it worked on its comprehensive zoning ordinance. This moratorium is still in effect and is expected to be lifted in August of 2000. The County's moratorium has completely stopped all platting within the Township. (Jopp at 1085-1090).

33. Demand for residential lots in St. Augusta Township has increased. The average price for a home is \$131,000. Prior to the enactment of its interim moratorium on all platting, St. Augusta Township averaged 25-30 single-family building permits per year. (Jopp [mbt vol. I] at 73; Kieke [mbt vol. I] at 141; Jopp at 1086-1090; MB Ex. 19 at 10).

34. The greatest concentration of plats or existing development is located in the St. Augusta and Luxemburg town sites, and the corridor in between. The St. Augusta town site is located in the eastern portion of the Township by Interstate 94 and County Road 75. The Luxemburg town site is located in the western portion of the Township by State Highway 15. (Jopp [mbt vol. I] at 61; Garross [mbt vol. I] at 165; Jopp at 1067-1068; Licht at 1683-1685; 1730-1731; MB Exs. 2, 8, 10).

35. St. Augusta Township's comprehensive plan identifies the Luxemburg and St. Augusta town sites as "primary growth centers". The primary growth centers refer to those areas where typical suburban densities are anticipated to concentrate and where urban type improvements and standards will be focused. (MB Ex. 11 at 67-68).

36. Both St. Augusta Township and the City of St. Cloud identified the St. Augusta Township town site, located in the extreme northeast corner of the Township immediately south of I-94, as a primary planned urban growth area. This designation indicates that both the Township and St. Cloud anticipate urbanization in this area in the immediate future. In addition, both the Township and St. Cloud identified the area adjacent to I-94 and Highway 15 as showing signs of urbanization. (Shardlow at 44; Ex. 220).

37. St. Augusta Township's comprehensive plan contemplates limited residential development in the northern portion of the Township occurring on marginal farmlands. The comprehensive plan anticipates substantial low-density growth around both town sites. Upon the establishment of municipal sewer and water, the

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comprehensive plan envisions medium and high-density residential growth in the St. Augusta town site area. (MB Ex. 11 at 86-92).

38. Township Planner David Licht envisions that the St. Augusta town site will be the core from which development and urban services will extend through the middle of the Township toward the Luxemburg town site. (Licht at 1730-31; MB Ex. 11 at 66-68).

39. The opening of the New Flyer Bus manufacturing plant will create increased demand for ancillary support services and businesses. It is also anticipated that some of these supporting businesses will locate in St. Augusta Township. The Township clerk has received increased inquiries from business concerns since the

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bus company began operations. The New Flyer plant is located near the border of St. Augusta Township and St. Cloud by 1-94 and County Road 75. (Jopp [mbt vol. I] at 82; Garross [mbt vol. I] at 167-168; MB Ex. 19 at 34-35).

40. Due to the lack of public sewer and water services in St. Augusta Township, residential development has been low density with lot sizes ranging from one to twenty acres. (MB Ex. 11 at 89-90, Ex. 19 at 33).

41. Currently, St. Augusta Township has an average of .35 residential units per acre. The Township's zoning ordinance provides for a density of one to three acre minimum lots. But in the urban and suburban residential districts (R-1, R-2), the zoning ordinance also allows for 15,000 square foot lots once sewer and water services are established or if a community-based sewer system is available. (Ex. 208 at 4; Licht at 1752-1754; 1780-1781; MB Ex. 19 at 53).

42. Without the availability of sewer and water, residential development in St. Augusta Township will continue to consist of large lot, single family residential development. (MB Ex. 19 at 11).

43. Unless carefully planned, the cost of retrofitting existing residential developments on large unsewered lots for wastewater infrastructure in the future can be 7 to 10 times more, than if sewer services are provided in conjunction with development. Often with retrofitting, existing streets need to be torn up in order to install the pipes. (Shardlow at 65-66; Gaetz at 546-547; Bettendorf at 1460).

44. In order to plan for future development once water and sewer services become available, St. Augusta Township's subdivision zoning ordinance requires that if a parcel of property has the potential for future subdivision it must contain "ghost plats" which identify where additional lots on the property will be located once sewer and water services are installed. A property owner cannot develop the additional platted ghost lots on his property until the services become available. The purpose of ghost platting is to reduce the cost of installing sewer and water services by decreasing the likelihood of having to tear up existing streets in order to retrofit areas with infrastructure. Ghost platting allows St. Augusta Township to direct near-term growth in a manner consistent with the future need for sewer. (Jopp at 1340-1342, 1356-1357; Licht at 1689-1690, 1698, 1755-1757, 1784-1785).

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45. Both St. Augusta Township's comprehensive plan and zoning ordinance anticipate sewer service in the St. Augusta town site. The comprehensive plan designates portions of the town site for medium and high density housing when public sanitary sewer is available and the town site is zoned R-2 Urban Residential, which allows for minimum lot sizes of 15,000 square feet if served by public sewer and water. (MB Ex. 11 at 86-92).

46. St. Augusta Township has prepared a preliminary plan detailing a proposed layout of sanitary sewer and municipal water in the St. Augusta town site, as well as a long range layout of sewer trunk mains throughout the northern two-thirds of the Township. (MB Exs. 21, 22).

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47. The areas outside of the Luxemburg and St. Augusta town sites in St. Augusta Township are planned as secondary growth areas. (Jopp at 1079).
48. St. Augusta Township has experienced development pressures within the last 10 to 20 years changing the basic character of parts of the Township from rural to urban or suburban. In particular, the Luxemburg and St. Augusta town sites are becoming urban or suburban in character. (LiGht at 1799-1800; MB Ex. 19 at 105).
49. The southern one-third of St.. Augusta Township is primarily rural in character. The Township has planned this area to be an “agricultural preservation area” to preserve, promote and maintain the use of this land for commercial agricultural operations. The Township’s goal is to restrict residential growth from occurring in and conflicting with the long-term agricultural areas within the Township. (MB Exs. 11 at 86- 87, 19 at 105).
50. Approximately 85 percent of St. Augusta Township is zoned general agriculture (A-I). (Jopp at 1247; Ex. 10; Licht at 1759).
51. The St. Augusta Township zoning ordinance contains provisions designed to protect agricultural areas from intensive future development through the use of a conditional use permit process and density requirements. To preserve farm land, the Township limits residential development outside of the town sites to lands determined to be marginal for crop production or soil quality. (MB Exs. 9, 19 at 27-28).
52. St. Augusta Township’s zoning ordinance limits residential density in areas zoned agriculture to no more than 4 units in 40 acres (one unit per 10 acres), or 10 units in 40 acres with a conditional use permit. Since zoning went into effect, no conditional use permits have been granted. The ordinance establishes lot size limits and contiguity requirements that encourage more compact development than the 4/40 standard implies. The objective of the requirements is to provide farmers with the ability to sell portions of their land that are less productive, while retaining the majority of the land in agricultural uses. (Jopp at 1248; Exs. 9, 10; Licht at 1701, 1760, 1788).
53. There are approximately 20 large feedlots (50 or more animals) currently within St. Augusta Township. Eleven of the twenty feedlots are located in the southern half of the Township. (Garross [mbt vol. I] at 178; MB Exs. 17, 19 at 30).

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54. St. Augusta Township regulates the location, development, and expansion of feedlots via provisions outlined in its zoning ordinance. The Township zoning ordinance stipulates the conditions. under which feedlots are allowed to operate and sets out the standards for pollution control, manure utilization, setbacks, requests for operation expansion, MPCA feedlot permit requirements, and facility closure. (Licht [mbt vol. II] at 138; MB Ex. 19 at 31).
55. Stearns County is responsible for issuing zoning permits, inspections, and code enforcement in the Township in cases where the subject property is located within the shoreland, flood plain or wild and scenic rivers overlay districts. Stearns County Environmental Services Department is responsible for the review and enforcement of environmental regulations. St. Augusta Township issues building permits, performs inspections and enforces the Township code in all other areas. (MB Ex. 19 at 49-50; Licht at 1765).
56. Because regulation of these matters fall within Stearns County’s jurisdiction, St. Augusta Township does not have separate ordinances regarding the regulation of flood

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plains, shoreland, scenic rivers, or environmentally sensitive areas. Instead, the Township's zoning ordinance incorporates by reference the County's environmental protection ordinances. (Licht at 1764-1767; Ex. 208 at 11).

Transportation

57. St. Augusta Township maintains approximately 40 miles of paved Township roads. In the area proposed for annexation by St. Cloud, there are approximately 8.7 miles of Township roads. The total amount of roadways in the St. Augusta Township, including 1-94, Highway 15 and County roads, is approximately 96.8 linear miles. (Jopp at 1063; MB Ex. 19 at 37, Ex. 209 at 1).

58. The opening of the New Flyer Bus company has increased traffic on County Highway 75 in St. Augusta Township. (Jopp at 1132-1133).

59. As part of its agreement with the New Flyer Bus company, St. Cloud has committed to constructing a full access interchange at the intersection of Interstate 94 and County Road 75. (Gaetz at 386-394; 510-512; Hagelie at 991-994; Ex. 185).

60. According to its Comprehensive Transportation Plan, Stearns County will upgrade all but one stretch of the County Highways in St. Augusta Township to the status of "major collector", add a north-south extension to County Highway 136, construct an east-west extension between County Highway 44 and Interstate 94, and construct a new County Highway east of Interstate 94. (Gaetz at 378-389; MB Ex. 19 at 40, Ex. 209).

Existing governmental services

61. Currently, St. Augusta Township employs one full-time maintenance person, a part-time office manager, a part-time clerk, and a part-time treasurer. The maintenance person performs general upkeep/repair work and maintains the Township roads by plowing, grading, and cutting grass. (Jopp at 1098-99, 1225-1228; Kieke [mbt vol. I] at 144).

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62. St. Augusta Township currently provides its residents street construction and maintenance, planning and zoning services, building inspection and administrative services. The Township has developed a park consisting of approximately 22 acres and containing a picnic shelter, playground, ball field, trails and multi-purpose play area. (Erickson at 863-866; Jopp at 1098-1100).

63. St. Augusta Township does not have its own fire department, police department, centralized sewage treatment, or centralized water distribution system. (Jopp [mbt vol. I] at 89-90; Erickson at 864-866).

64. St. Augusta Township is currently without public sanitary sewer and water service. The sewer and water needs of area residents are currently provided by individual on-site septic systems and private water wells. The St. Augusta business park uses a shared well and septic system. The business park is located in the proposed annexation area. Likewise, a residential development located in the St. Augusta town site shares a community well and septic system. St. Augusta Township does not own these "community wells". Rather, these wells and septic systems are privately owned by homeowners or business associations. (Bettendorf [mbt vol. I] at 224; Erickson at 846; Jopp at 1060-1061; MB Exs. 11 at 19, 19 at 64).

65. St. Augusta Township contracts with the Cities of Rockville, St. Cloud and Kimball for fire protection services. The total amount St. Augusta Township pays approximately \$40,000 a year to St. Cloud for fire protection services, and a little over \$10,000 each to

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Rockville and Kimball. (Jopp [mbt vol. I] at 94-96, Jopp at 1110-1112, Jopp at 1308-1309; MB Ex. 19 at 72).

66. Stearns County provides the Township with police protection services. The Stearns County Sheriff's Department has four squad cars patrolling St. Augusta Township at all times. (Jopp at 1098; Kostreba at 1150-1155).

67. St. Augusta Township's incorporation as a city would not affect the provision of services by the Stearns County Sheriff's Department. The protection services would stay the same unless St. Augusta Township wanted to contract for additional hours. (Kostreba at 1157).

68. The Stearns County Sheriff's Department responded to request for services in St. Augusta Township 552 times in 1996, 684 times in 1997, and 616 times in 1998. Out of the 36 townships within Stearns County, St. Augusta Township had the second highest number of calls for police assistance. St. Joseph Township had the highest number of police service calls. (Kostreba at 1162-1164; Twp. Ex. 33).

69. The Stearns County attorney's office currently prosecutes misdemeanors that occur in the Township. The township has averaged 91 criminal prosecutions a year for the last three years. Upon incorporation, St. Augusta Township would be required to provide its own prosecution services. It will cost the Township approximately \$10,000 a year to contract for misdemeanor prosecution services. (Jopp at 1108-1109; Twp Ex. 36).

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70. Stearns County also provides St. Augusta Township with assessor services, septic tank inspection services, and general human services. (Jopp at 1103-1104; Twp. Ex. 36).

71. St. Augusta Township also contracts for planning, engineering and attorney services.
Environmentalprpj?jems

72. The potential for septic system failures and the resulting ground water pollution is a concern for St. Augusta Township. Both septic system age and the density of development contribute to the likelihood of septic system failures. (Popken at 581-588; MB Ex. 11 at 9).

73. Approximately five to ten septic systems fail per year throughout the entire Township. One septic system failed in the proposed annexation area in the last two years. (Popken at 597; MB Ex. 19 at 65; Ex. 161).

74. The majority of the soil types found in St. Augusta Township are not suitable for septic system use. Given the types of soils in St. Augusta Township, septic systems should be monitored closely to ensure that they are operating adequately and to decrease the potential for ground water contamination. (Garross [mbt vol. I] at 176-177).

annexation. Of these wells, 13 were tested and nine were found to have positive nitrate levels. Two of the nine had nitrate levels far exceeding recommended levels for drinking water in Minnesota.⁹ Nitrates are associated with fertilizer use and septic system contamination. (Popken at 570-574; Exs. 159, 160).

76. Continued development of the proposed annexation area with private septic systems threatens to harm the environment and the health of Township residents by increasing the potential for ground water pollution. (Popken at 581-584).

Fiscal Impact

77. According to 1998 data, the assessed valuation of land and buildings in St. Augusta

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Township is \$30,480,500 and \$84,963,300, respectively. The total valuation for the entire Township is \$115,443,800. (MB Ex. 19 at 87).

78. St. Augusta Township has a tax capacity of approximately \$1,490,000. The Township's tax rate for 1999 was 17.26% and 17.16% for 1998. The Township has no bonded indebtedness. Currently the Township has \$400,000 in cash and \$100,000 in investments. (Jopp [mbt vol. I] at 62-63; Jopp at 1123-1126; MB Ex. 5; Twp. Ex. 103).

79. In 1998, St. Augusta Township had disbursements or expenses in an amount totaling \$430,000. For that same year, St. Augusta Township received revenue
Ten parts nitrate per million is the maximum level allowed for drinking water to still be considered safe for small children. (Popkens at 572).

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totaling \$481,000. As a result, the Township had a surplus of \$51,000 at the end of 1998. (Jopp at 1124-1125, 1235-1236; Exs. 221, 222).

80. St. Augusta Township sets aside \$150,000 in its budget every year for road maintenance. As a cost-saving measure, the Township undertakes large paving projects every other year by carrying over the surplus from the prior year. (Jopp at 1099-1100, 1321-1322, 1361; Twp. Ex. 40).

81. The Township has begun preliminary planning for public sewer and water services. A study completed in 1997 by the Township engineer, Joseph Bettendorf, estimated that providing water and sewer services to the area in and around the St. Augusta town site would cost approximately \$22.5 million. The cost is based on 1997 construction dollars and assumes full development of the study area. The study assumed that the system would connect to the existing St. Cloud wastewater treatment plant located on the eastern edge of St. Augusta Township. The study also assumed that the Township would construct its own water supply and storage facilities. The total figure includes the cost for constructing trunk lines for sanitary sewer and water main, water towers, wells and pump houses. The study estimated that the cost of constructing the trunk lines and other infrastructure for sanitary sewer connection alone would be \$10,654,168. And the probable cost for constructing the water main, two water towers, three wells and a pump house was \$11,807,313. (Bettendorf at 1212- 1214, 1439, 1453-1454; MB Ex. 22).

82. St. Augusta Township is exploring the possibility of obtaining sanitary sewer service from the City of Cold Spring. In order for St. Augusta Township to obtain municipal sewer services from the City of Cold Spring, a new sewer line would need to be constructed between the Cities of Rockville and Cold Spring. (Jopp at 1112-1113; Bettendorf at 1185-1187).

83. According to data compiled by the engineering firm of Bonestroo, Williamson and Kotsmith (BWK) for the Joint Planning Board, it would cost St. Augusta Township \$16.44 million to build the infrastructure needed to convey wastewater from the ultimate service area¹ surrounding St. Augusta to St. Cloud's wastewater plant for treatment. If St. Augusta Township were to convey its wastewater to a plant in Cold Spring for treatment, it would cost the Township \$28.57 million to service the same area. The "ultimate service area" is the area within the Township identified by a dashed line on the December 13, 1999 map depicting St. Cloud's urban growth area. The ultimate service area includes the proposed annexation area and the St. Augusta and Luxemburg town sites. It does not include the corridor between the town sites. (Shardlow at 119-122;

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Bettendorf at 1455-1459; Exs. 206, 220).

84. Using the same data from BWK, the Township Engineer concluded that it would cost St. Augusta Township \$10.9 million to convey wastewater from the ultimate

¹⁰ The Joint Planning Board's "ultimate service area" is identified by a broken orange line on the map

labeled Exhibit 220 (St. Cloud Urban Growth Area Master Plan Planned Urban Expansion Areas) and

includes both the primary and secondary planned urban areas south of 1-94. This area differs from the primary growth area identified by the Township's comprehensive plan.

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service area to Cold Spring for treatment based on development levels projected for the area for the year 2020. And assuming the same 2020 population for the ultimate service area, it would cost the Township \$6.2 million to convey wastewater from that area to St. Cloud for treatment. At 100 percent or "full saturation" development, however, the Township's engineer estimated that it would cost St. Augusta Township \$29.5 million to convey wastewater from the ultimate service area for treatment to Cold Spring and \$17.9 million to convey wastewater for treatment to St. Cloud's plant. The greater the development density the more expensive the cost of constructing the infrastructure necessary to provide sewage treatment. (Bettendorf at 1185-1189, 1455- 1459, 1466-1469).

85. In every study, it will be less expensive for St. Augusta to obtain sewage treatment services from St. Cloud's wastewater treatment plant than from the plant located in Cold Spring.

86. If St. Augusta Township were to provide its own water service it would need to drill a well and construct water towers for storage capacity. Township engineer Bettendorf estimates that it would cost the Township approximately \$2 million to construct its own well system. This amount would also include the cost of a short section of water main, pump house, storage tanks, piping and chemical fee for fluoride and chlorine treatment. (Bettendorf at 1210-1214; Ex. 22).

87. Cities typically finance the cost of installing sewer and water services through property assessments if there is a benefit to the property owners. To the extent that the utility project is going to benefit future growth, the cost is typically carried by the city and recovered through sewer availability and water availability hook up charges. With new developments, the entire cost of installing the sewer and water system is usually picked up by the developer. (Bettendorf at 1219-1 222).

88. As an incorporated city, St. Augusta Township will be better able to obtain the long-term financing necessary to develop municipal sewer and water services. (Jopp at 1315-1316; Licht at 1718-1719).

89. Incorporation of St. Augusta Township will result in additional state aid, such as Homestead and Agricultural Credit Aid and Local Government Aid. With townships, state aids are primarily based upon per capita figures. But a city's allocation also includes market valuation and increases in estimated market values. Given St. Augusta Township's continued growth and development, a progressive increase in state aids can be expected. (Twp. Ex. 19 at 91).

90. Incorporation of St. Augusta Township will not have a significant or detrimental fiscal impact on the Township or on any adjacent units of local government. While the

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Township will incur some additional costs for prosecution services, it will gain additional state aid.

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School districts

91. St. Augusta Township is served by two school districts. Approximately 75 percent of school-age children living in St. Augusta Township attend St. Cloud Public School District 742. (Jopp [mbt vol. I] at 82; Jopp at 1298).

92. Incorporation of St. Augusta Township would have no impact upon either of the two school districts serving the Township. (Jopp [mbt vol. I] at 82-83).

Adequacy of services delivered by Township

93. St. Augusta Township currently provides adequate services for all its residents. As Township development and population growth increases, however, on-site septic systems and private wells will become inadequate to serve the urban/suburban portions of the Township. Ultimately, the Township will need to provide sewer and water services to accommodate continued development. (Garross [mbt vol. I] at 177).

Whether incorporation can best provide necessary services

94. Incorporation will give St. Augusta Township greater economic development powers, such as the ability to establish an economic development authority and a tax increment financing district. (Jopp at 1315-1316).

95. Incorporation of St. Augusta Township will enable the Township to protect future investments in infrastructure by stabilizing the Township's borders and preventing further annexations of Township property. The inherent instability of the Township's borders and the potential for further annexations impedes the Township's ability to plan or invest in infrastructure for public sanitary sewer and water services. (Mondloch [mbt vol. I] at 116-117; Licht [mbt vol. II] at 73; Jopp at 1323-1324; Mondloch at 1495-1496; Licht at 1717-1718).

96. Incorporation of St. Augusta Township will also enhance the Township's ability to protect and preserve its agricultural land. As evidenced by the Township's 1995 comprehensive plan and its zoning ordinance, the Township has engaged in extensive planning to maintain the rural character of the Township's southern region. (MB Ex. 11).

97. Because St. Augusta is a township and not a city, its zoning and subdivision ordinances are subject to review by Stearns County. St. Augusta Township's zoning must be as or more restrictive than Stearns County's zoning. Incorporation would streamline the subdivision and zoning process by vesting sole planning and zoning authority in the newly-incorporated city. (Licht at 1694, 1803).

98. In 1994, the St. Augusta Town Board put the issue of incorporation to a public vote. Approximately 350 residents voted and a majority opposed incorporation. After this vote, the Town Board held a series of meetings in the St. Augusta and Luxemburg town sites explaining the advantages and disadvantages of incorporation.

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Another vote was held on March 14, 1995. On this date, 507 people voted and 58 percent voted in favor of incorporation¹¹. (Jopp [mbt vol. I] at 83-84, 112).

99. At the public hearing in this matter held Wednesday January 5, 2000, residents of St. Augusta Township overwhelmingly expressed support for the proposed incorporation of

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their Township and opposition to St. Cloud's proposed annexation. (Transcript Vol. III B; Twp. Ex. 30).

100. St. Augusta Township will be better able to protect the public health, safety and welfare of its residents as an incorporated city.

101. The primarily rural southern one-third of the Township would have too few resources to continue on as a viable township separate from the two town sites and connecting corridor. The Township zoning has planned for and addressed agricultural preservation for this area. (Licht at 1800-1801; MB Ex. 19 at 102, MB Ex. 31).

Contiguity of boundaries

102. St. Augusta Township is surrounded on the west, south and southeast by other townships. The Cities of Waite Park and St. Cloud abut the Township on the north. (MB Exs. 2, Ex. 31 at 98).

103. Interstate 94 runs the entire length of the Township from east to west, and the Mississippi river runs along a portion of the Township's eastern border. (MB Ex. 2).

104. The area sought to be incorporated abuts the Cities of Waite Park and St. Cloud. (MB Ex. 2).

105. Of the eight jurisdictions which share a common border with St. Augusta Township, seven passed resolutions in support of the Township's proposed incorporation. (MB Exs. 1, 3).

State building code

106. The State building code is currently being enforced by the Township. St. Augusta Township issues building permits, performs inspections, and enforces the building code. Incorporation will have no impact on the enforcement of the building code. (MB Ex. 19 at 49).

Schilplin and RCH Partnership Petitions for Annexation

107. Fred Schilplin owns approximately 248 acres in St. Augusta Township. Schilplin's property is located in St. Augusta Township in the southwest and southeast quadrants of the intersection of Interstate 94 and Highway 15. The current population on Schilplin's property is zero people. (Schilplin [mbt vol. II] at 143-144; MB Ex. 2).

108. Schilplin's property abuts the southwestern boundaries of the City of St. Cloud and none of it is presently part of an incorporated city. Currently Schilplin's property is unplatted and zoned for general agriculture. (Schilplin [mbt vol. II] at 141; MB Ex. 10). 294 votes were in favor of incorporation and 213 were opposed.

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109. The majority of Schilplin's property consists of Hubbard-Dickman Association soils. This type of soil is rated "severe" or "poor" for septic tank use. (Licht [mbt vol. II] at 112-113; Schilplin at 1039; MB Exs. 18, 19 at 17).

110. Wetlands have been identified on Schilplin's property but they have not yet been officially delineated. Delineation involves analyzing the soils' hydrology and determining the wetlands' boundaries. (Gartland at 329-330; Berg at 1367-72, 1394; Twp. Ex. 39).

111. Although protected by various regulations, wetlands are not a complete bar to property development. A property owner may drain or fill wetlands to develop a property provided the property owner replaces the wetlands filled on a two-to-one ratio.

Replacement can either be done on-site, by creating or restoring wetlands, or by buying "banking credits" from somebody who has restored or created a wetland within the same

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county of watershed. (Berg at 1375-1 376; 1400).

112. Under St. Augusta Township's comprehensive plan, Schilplin's property is located within the secondary growth corridor. Secondary growth corridors are not intended to urbanize within the next 20 years. (MB Ex. 11 at 67)

113. Schilplin wants to develop his property commercially within the next five to ten years. Without municipal sewer and water services, Schilplin's ability to develop his property commercially is limited. (Schilplin [mbt vol. II] at 145-146; Schilplin at 1039).

114. In cooperation with Stearns County, St. Cloud plans on constructing an interchange at the intersection of Highway 15 and 33 Street in the near future. The interchange will be located just north of Schilplin's property. It is estimated that the cost of the interchange construction will be between \$4 million and \$6 million. Federal funds may cover up to 80 percent. (Gaetz [mbt vol. III at 176-1 77, 245-246).

115. Once the intersection at Highway 15 and 33^d Street is constructed, it will move more traffic and open the surrounding area for increased development. This in turn will create a stronger impetus for growth to continue moving toward Schilplin's property. (Gaetz {mbt vol. II] at 177; Gartland [mbt vol. II] at 244-245).

116. In 1998, Schilplin submitted a proposal to the City of St. Cloud to locate its planned Central Minnesota Event Center on his property. Schilplin's property was one of 11 sites considered by the City of St. Cloud for the planned event center. Schilplin's proposal, however, did not make the Committee's final cut and his property is no longer being considered for the event center site. (Schilplin {mbt vol. II] at 144, 147; Gartland [mbt vol. II] at 255-256).

117. According to the Joint Planning Board's December 13, 1999 map depicting St. Cloud's urban growth area master plan, Schilplin's property is located within a primary planned urban area. If annexed to St. Cloud, Schilplin's property would be developed for urban densities. The land directly east of Schilplin's property between Highway 15 and County Road 136 would be developed as park land or preserved as open space. (Shardlow at 63; Gartland at 290-293; Ex. 220).

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118. Given the high visibility of his property's location at the intersection of 1-94 and Highway 15 and the development pressures already existing in the southern portion of St. Cloud, Schilplin's property will become urban or suburban in character before the year 2020. (Gartland at 171-172; Ex. 208 at 9).

119. St. Augusta Township has no plans to provide water and sewer treatment services to Schilplin's property within the next 20 years. (Jopp at 1259-1260).

120. St. Cloud estimates that it could extend sewer and water to Schilplin's property within the next five to ten years. St. Cloud is currently installing public sewer and water main improvements along 33 Street South, which is parallel with and approximately one mile north of 1-94. (Gaetz {mbt vol. Ii] at 205-206; Gaetz at 425).

121. The annexation of Schilplin's property to the City of St. Cloud would not have an adverse effect on the ability of the remainder of St. Augusta Township to carry on the functions of government.

122. Christopher Hauck and his father make up RCH Partnership ("RCH"), which owns property south of Interstate 94, and east of Highway 15 in St. Augusta Township. The property consists of 42 acres and is currently unplatted land zoned agricultural. The

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property is currently being rented for farming. The population of RCH's property is zero people. (Hauck at 790-792; Ex. 314).

123. Together with the adjoining petitioned Schilplin property, RCH's property abuts the City of St. Cloud's southwestern boundaries and none of it is presently part of an incorporated city.

124. RCH's property consists of Hubbard-Dickman Association soils. This type of soil is rated "severe" or "poor" for septic tank use. (Licht [mbt vol. II] at 112-113; Hauck at 806; MB Exs. 18, 19 at 17).

125. Hauck wants to develop RCH's property for a mix of commercial and light industrial use. To do this, Hauck needs municipal sewer and water services. (Hauck at 801-802, 806).

126. The Crossroads Shopping Center and a Holiday Inn are located in St. Cloud approximately 3.5 miles north of RCH's property. Just north of 1-94 along County Road 74 there is a body shop, salvage yard, and chemical toilet business.¹² At the intersection of 1-94 and County Road 74 in St. Augusta Township near RCH's property, there is a landscaping business, a mini-storage business, a small trucking business and a craft store.¹³ And, located within the Township about a mile south of RCH's property on Highway 15, is a bottling facility. (Hauck at 794, 797-800; Jopp at 1095).

127. If RCH Partnership's property is annexed to St. Cloud, it is anticipated that it will be connected to St. Cloud's sewer and water services within five to ten years. (Hauck at 808).

¹² These businesses are located in section 32 on MB Ex. 2 (map).

¹³ These businesses are located in section 5 on MB Ex. 2 (map).

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128. Under St. Augusta Township's comprehensive plan, Hauck's property is within the secondary growth corridor. Secondary growth corridors are not anticipated to urbanize within the next 20 years. (Hauck at 805; MB Ex. 11 at 67).

129. Hauck did not submit an application to the St. Augusta Town Board to have his property rezoned commercial and never requested to have St. Augusta Township's comprehensive plan amended to remove his property from the secondary growth corridor. (Hauck 823).

130. Annexation of RCH Partnership's property to the City of St. Cloud would not cause the remainder of St. Augusta Township to suffer undue hardship.

131. RCH's property is located in an area that is about to become urban or suburban in character.

St. Cloud's Petition for Annexation

Population

132. St. Cloud's population in 1980 was approximately 42,566. St. Cloud's present population is approximately 62,781. Part of the increase in population is attributed to the merger of the City with St. Cloud Township in 1995. It is anticipated that St. Cloud will have a population of approximately 85,000 by the year 2020. (Ex. 208 at 2; Ex. 207 at 2-46).

133. The proposed annexation area has a present population of 236. It is anticipated that by the year 2020, the proposed annexation area will have a population of approximately 788. (Ex. 208 at 2).

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Quantity of/and, terrain, soil conditions

134. The City of St. Cloud is approximately 31.41 square miles. (Gartland at 160; Ex. 208 at 5).

135. The proposed annexation area consists of approximately 6.9 square miles. The majority of the soils in the proposed annexation area are Hubbard-Dickman and Dorset-Nymore Association soils. There are significant amount of wetland features within the western portion of the proposed annexation area. (Gartland at 160-162; Ex. 208 at 5-6; Twp. Ex. 18).

Contiguity of boundaries

136. The proposed annexation area is contiguous with the City of St. Cloud. Except for a small area in the extreme northwest corner, the northern boundary of the proposed annexation area abuts the corporate limits of St. Cloud. The Mississippi River abuts the east of the proposed annexation area. (MB Ex. 2, Ex. 208 at 5-7; Ex. 150A).

137. The extreme northwest corner of the proposed annexation area abuts the City of Waite Park. (Gartland at 191-192; MB Ex. 2; Ex. 208 at 15-16).

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Present development pattern, planning, land uses

138. The City of St. Cloud has a comprehensive plan, zoning ordinances, subdivision ordinances, flood plain regulations, shoreland management, scenic river ordinance, environmentally sensitive ordinance, and a capital improvements program. (Ex. 208 at 11).

139. St. Cloud currently has approximately 23,253 households. It is projected that St. Cloud will have between 32,000 and 33,000 households by the year 2020. (Ex. 208 at 3).

140. The proposed annexation area currently has approximately 125 households and a population of 236. It is projected that the area will have approximately 300 households and a population of 788 by the year 2020. (Jopp at 1064; Ex. 208 at 2-3).

141. The eastern third of the proposed annexation area, north of 1-94 from County Road 75 is urban residential. Moving westward, the proposed annexation area becomes rural residential and finally agricultural. (Licht at 1712).

142. St. Cloud has an average density of 5.59 residential units per acre. (Gartland at 238; Ex. 194 at 11).

143. St. Cloud's zoning ordinance limits residential density in areas zoned agriculture to no more than 1 housing unit per 40 acres. (Ex. 208 at 7).

144. St. Cloud currently has approximately 2,846 acres of vacant or undeveloped land. Of that total vacant acreage, an estimated 1,162 acres (41%) are considered environmentally sensitive or unsuitable for development. Developable vacant land, including agricultural land, comprises 1,684 acres. St. Cloud gained undeveloped land as a result of its merger with St. Cloud Township. (Shardlow at 111-114, Gartland at 257-266, 280-285; Exs. 194, 208 at 8, 220).

145. The most recent comprehensive plan for the City of St. Cloud was adopted in 1993. St. Cloud is waiting for the completion of the Joint Planning Board process before updating its own plan in order to be consistent with the regional plans developed by the Joint Planning Board. (Gartland at 148-149).

146. The Joint Planning Board is in the process of finalizing its "St. Cloud Urban Growth Area Master Plan." The plan identifies the geographic limits of the area surrounding St.

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Cloud that could be served by St. Cloud's waste water treatment plant. One of the goals of the plan is to protect urban areas from large unsewered developments. (Shardlow at 38-41; Exs. 207, 220).

147. St. Cloud has two industrial parks located in the western part of the city. In addition, St. Cloud is developing an industrial park in the area by County Road 75 and Interstate 94. (Erickson at 838-840).

148. The New Flyer Bus company consists of 74 acres located in St. Cloud's I94 Business Park (between the Mississippi River and 1-94, north of County Road 75).

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The company currently employs approximately 400 people and plans to employ as many as 800 people as production increases. (Hagelie at 991-996).

149. St. Augusta Township has zoned the vast majority of the proposed annexation area as A-I, Agriculture, with scattered areas of R-I, suburban residential zoning, and a small pocket of B-3, general business zoning. (MB Exs. 10, 11, Ex. 208 at 9).

150. Contrary to the Township's zoning, the Joint Planning Board's data suggests that the largest land use through 2020 within the proposed annexation area will be commercial and industrial development (30%), followed by undeveloped land (26%). Single-family residential development would account for twenty-four percent (24%), and park land 19 percent (19%). (Gartland; Ex. 208 at 9).

151. According to the Joint Planning Board's December 13, 1999 map depicting the St. Cloud urban growth area master plan, Schilplin's property is located within a primary planned urban growth area. (Shardlow at 63; Ex. 220).

152. The "primary planned urban areas" are those areas that the City of St. Cloud expects will become urbanized and plans to provide municipal sewer and water services to within 20 years. "Secondary urban growth areas" are areas expected to urbanize sometime after the next 20 year period. (Shardlow at 89-90, 143; Twp. Exs. 1-18).

153. The southern portion of St. Cloud is currently experiencing increasing residential and commercial development pressures and it is anticipated that these development pressures will continue into the proposed annexation area before the year 2020.

Preliminary plats for development down to the St. Augusta Township/St. Cloud border already exist. (Gartland at 171-172; Ex. 208 at 9, Ex. 213 at 24).

154. The majority of the proposed annexation area is about to become urban or suburban in character and will be developed within the next 20 years. (Shardlow at 139-140; Gartland at 194-195; Hagelie at 884).

155. The proximity of freeway interchanges at each end of the proposed annexation area will attract development as seen by the potential uses being discussed for the Schilplin and RCH properties. And the St. Augusta Business Park already exists on the eastern side of the proposed annexation area. Given that the land in the proposed annexation area is not prime agricultural land, the Township Planner anticipates increased demand for housing in this area. (Licht at 1717).

156. A significant portion of the proposed annexation area located between County Road 136 and Highway 15 will never be developed and instead, if annexed to St. Cloud, will become part of or compliment St. Cloud's planned Neenah Creek Regional Park. St. Cloud has designated this area as being a high priority for preservation and open space. This area is characterized by extensive wetland patterns. And while it is included in St. Cloud's ultimate service area, it is not designated a primary planned urban area. Because

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of the significant wetland features, neither St. Cloud nor St. Augusta Township anticipate that this area will experience

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significant urban development. (Shardlow at 45, 133-134, 139-140; Gartland at 290- 293; Licht at 1731; Ex. 220, MB Ex. 2).

Transport atio

157. The City of St. Cloud provides regional transportation services through its operation of the regional airport, trail systems, planning and development of the Northstar Rail Corridor, and public transit system. (Ex. 209).

158. There are 21.9 linear miles of roadways in the proposed annexation area. Of this amount, 8.7 miles are Township roads. The rest are county roads, county highways, a state highway (15) and federal highway (1-94). (Gaetz at 378-379; Ex. 209).

159. As part of an agreement with the New Flyer Bus company, St. Cloud has committed to constructing a full access interchange at the intersection of Interstate 94

and County Road 75. The projected cost for the interchange is between \$3 to \$6 million depending on whether the existing bridge is replaced. Stearns County has committed funding for half of the proposed interchange construction. (Gaetz at 386-

394; 510-512; Hagelie at 991-994; Ex. 185).

St. Cloud's ability to provide services

160. St. Cloud operates a wastewater treatment facility that currently has a treatment capacity of 13 million gallons per day. This capacity is 100 percent contractually allocated to five different cities. In addition to St. Cloud, the four cities currently connected to St. Cloud's wastewater treatment plant are: Sauk Rapids, Waite Park, Sartell, and St. Joseph. (Gaetz [mbt vol. II] at 214; Hagelie at 1899).

161. St. Cloud intends to expand its wastewater treatment plant within five to ten years. The plant's capacity can be expanded to 24 million gallons per day. (Gaetz [mbt vol.11] at 213-214; Gaetz at 411, 456, 486-490).

162. It is anticipated that by the year 2020, St. Cloud's peak demand for water will be 20.34 million gallons a day. (Gaetz at 1827-1 828).

163. St. Cloud provides water and sewer services to 94 percent of its residents, with the rest scheduled for service before 2005. (Ex. 213 at 2-3).

164. The Joint Planning Board identified the town sites of St. Augusta and Luxemburg as part of St. Cloud's wastewater treatment plant's ultimate potential service area. The corridor of development between the town sites is not included. (Exs. 29, 220).

165. In 1999, the St. Cloud City Council resolved not to contract with additional cities for wastewater treatment services. Since that change in policy, however, St. Cloud has had discussions with the city of Pleasant Lake about providing future

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sewer service, If St. Cloud decides to contract with Pleasant Lake for sewer services, it will have to amend the resolution passed by its City Council in 1999 prohibiting the provision of wastewater treatment services to any additional cities that it does not

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currently contract with. (Gaetz [mbt vol. 11] at 180-183, 224-225; Licht at 1602; Hagelie at 1030).

166. The City of St. Cloud can feasibly provide water and sewer services to the proposed annexation area and already provides such services to land abutting the Schilplin property. (Gaetz [mbt vol. II] at 174-178; Ex. 209).

167. St. Cloud has ample water storage facilities to serve the needs of the City and the proposed annexation area. St. Cloud has 3 elevated water storage tanks. The Calvary hill tank has a 2 million gallon capacity. The west side tank has a 1.5 million gallon capacity and the southeast tank has a 1.5 million capacity. There is also underground storage at the St. Cloud plant. (Gaetz at 486-493, 500, 1828; Twp. Ex. 97, Ex. 209).

168. St. Cloud could extend municipal sewer and water services to the eastern portion of the proposed annexation area, closest to the proposed 1-94/County Road 75 interchange and the wastewater treatment plant, almost immediately. And St. Cloud could connect the western portion of the proposed annexation area to services within the next 20 years. (Gaetz at 40 1-403, 476-477, 544-545; Ex. 209).

169. At the time of the construction of Interstate 94, a sleeve was placed under the freeway to allow for the extension of sewer and water services from the St. Cloud facilities. The sleeve is located at the eastern end of 1-94, south and east of the St. Augusta town site. (Licht at 1604).

170. Assuming full development conditions, it would cost approximately \$43 million to provide wastewater collection and treatment services to the proposed annexation area and \$24 million to provide water service to the proposed annexation area. These figures assume the proposed annexation area is 100 percent developed at the time of utility installation, rather than estimating the cost of staging sewer and water main installation as development occurs. (Gaetz at 408-410, 529-532; Ex. 209).

171. The cost of installing sewer lines and water mains is commonly funded by property assessments and connection charges. With new subdivisions, St. Cloud requires developers to pay for the cost of installing lateral sewer lines and water distribution mains based on a standardized rate reflecting the average cost for sewer and water improvements. (Gaetz at 479-483; Norman at 741-743; Bettendorf at 1220- 1221).

172. To date, the cost of extending sewer and water services to the former St. Cloud Township is \$22 million. Approximately 70 percent of this cost was assessed to the property owners. St. Cloud incurred the remaining 30 percent, or approximately \$6 million. (Gaetz at 546-548; Norman at 722, 735).

173. St. Cloud maintains 272 miles of street and 41 miles of alleys. The city has 60 employees who maintain the St. Cloud street system. St. Cloud's 1999 budget for street construction and maintenance was nearly \$5 million. (Ex. 213 at 3-5).

174. St. Cloud employs 52 full-time firefighters and has 2,000 fire hydrants. St. Cloud has also purchased land and intends to build a fourth fire station in the southern

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portion of the City to be completed by 2005 or 2006. St. Cloud currently carries a fire insurance (ISO) rating of 4. (Erickson at 849-855, Ex. 213 at 4-6).

175. St. Cloud operates a police department with 79 sworn officers. The St. Cloud Police Department is fully capable of providing law enforcement services to the proposed annexation area. (Erickson at 855-856; Kostreba at 1173-74; Ex. 213 at 4-5).

176. St. Cloud has 396 employees that carry out a full array of governmental services. (Ex, 213 at 7).

177. St. Cloud has 78 parks totaling 950 acres, a museum, nature center, public library and civic center. (Erickson at 858; Ex. 213 at 9; Rusk at 918-919).

Environmental problems

178. The soil types found in the proposed annexation area are not suitable for septic systems. Currently, there are several residential housing developments in this area. Further development of this area with septic systems increases the potential for groundwater contamination. (Popkens at 580-588; MB Exs. 10, 18; Ex. 208 at 6).

179. A testing of 13 of the 14 private wells in the proposed annexation area revealed findings of positive nitrate levels in nine wells. Two of the nine had nitrate levels far exceeding recommended levels for drinking water in Minnesota.¹⁴ Nitrates are associated with fertilizer use and septic system contamination. (Popkens at 568-574; Exs. 159, 160, 161).

180. Municipal sewer and water services can only prevent potential groundwater contamination from septic systems. These services cannot prevent groundwater contamination from fertilizer runoff. (Popkens at 603-611).

181. It would be better to have municipal sewer and water services installed in the proposed annexation area before any further development occurs. (Popkens at 581-588, 611-613).

Fiscal Impact

182. St. Cloud has an A-I bond rating from Moodys and a AA rating from Standard & Poors. A strong bond rating from the investment community results in a more favorable interest rate on money borrowed by a municipality. (Norman at 628-630; Ex. 154).

183. As of 1999, St. Cloud had a net tax capacity of \$30,429,350. St. Cloud's tax rate for 1999 was 38.4%. St. Cloud's outstanding debt increased from \$101 million in 1998 to \$130 million in 1999. (MB Ex. 34, Ex. 213 at 13-15).

184. The proposed annexation will have a positive impact on the City of St. Cloud by enhancing its tax base. An increased tax base helps the City pay for the rising costs associated with servicing aging buildings and infrastructure within the City. (Upcraft at 1416: Twp. 103, Ex. 208 at 12-13, Ex. 213 at 13).

¹⁴Ten parts nitrate per million is the maximum level allowed for drinking water to still be considered safe for small children. (Popkens at 572).

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185. Lands annexed to St. Cloud will experience an increase in property taxes. This increase in property taxes, however, bears a reasonable relationship to the additional services the area will receive from the City.

186. St. Cloud anticipates that at least 70 percent of the cost of extending water and sewer services to the proposed annexation area will be assessed to the property owners in St

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Augusta Township. (Norman at 735; Hagelie at 877).

187. St. Cloud has the financial capacity to provide municipal services to the proposed annexation area and to absorb the costs associated with serving the proposed annexation area. In addition, the expanding revenue base gained by the annexation will offset the costs of extending services to the proposed annexation area. (Erickson at 754-755; Hagelie at 885; Exs. 211, 213 at 13).

School districts

188. Given that St. Cloud Public School District 742 already serves the majority of St. Augusta Township, including the entire proposed annexation area, annexation will have no significant impact on the school district.

Adequacy of town government to deliver services

189. St. Augusta Township does not plan to provide sewage treatment services to the proposed annexation area within the next 20 years. (Gaetz at 420; Jopp at 1259- 1260; MB Ex. 11 at 67, Ex. 208 at 15, Ex. 209).

190. St. Augusta Township does not oppose the eventual annexation of Township property located north and east of Interstate-94 within the proposed annexation area when services are needed.

Whether governmental services can best be provided through annexation

191. St. Augusta Township concedes that the portion of the proposed annexation area north and east of Interstate 94 are best served by St. Cloud. (Mondloch at 1487-93).

192. The City of St. Cloud is in the best position to extend full municipal water and sewer services to accommodate urban and suburban growth in the proposed annexation area. (Gartland at 177-178).

193. The City of St. Cloud has the financial resources and engineering and planning staff to design, construct and finance sewer and water lines, streets, sidewalks, drainage systems, and other public infrastructure improvements needed for full development of the proposed annexation area. (Gaetz at 418-420; Ex. 209).

194. The City of St. Cloud has a comprehensive plan, zoning ordinances, subdivision ordinances, flood plain regulations, shoreland management, scenic river ordinance, environmentally sensitive ordinance, a heritage preservation ordinance, and capital improvement programs. St. Augusta Township has only a comprehensive plan, zoning ordinances, and subdivision ordinances subject to Stearns County approval. (Ex. 208 at 11).

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195. Given its more comprehensive set of environmental protection ordinances and its experience in environmental regulation, St. Cloud is better able to protect and regulate the environmentally sensitive areas located within the proposed annexation area. (Shardlowat 140; Gartland at 162-163; Ex. 208 at 6, 11, 19; Exs. 189-191).

196. The extreme northwest corner of the proposed annexation area abuts the City of Waite Park. St. Cloud anticipates that the two cities would approve a concurrent detachment and annexation action for the small part of the proposed annexation area that is located north of I-94 and west of Highway 15 to provide rational contiguity and extension of services to the area from Waite Park. (Gartland at 191-

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192; Ex. 208 at 15- 16).

Ability of remaining township to continue

197. If the proposed annexation is granted, St. Augusta Township will lose approximately 14 percent of its tax base and property tax revenue, amounting to about \$36,000 in tax revenue annually. And the remaining Township will lose about half (\$18,000) of its Homestead Agricultural Credit Aid, for a total loss of about \$50,000 annually. The reduction in revenue will be offset by the reduction in expenditures to service the subject area. For example, the Township will save approximately \$21,000 annually in road maintenance costs for the 8.7 miles of road in the proposed annexation area it will no longer have to maintain. In addition, with the annexation of property to St. Cloud, the Township's annual \$65,000 in costs for fire protection service will be reduced. And the remaining Township will be relieved of the responsibility and cost of prosecuting traffic violations occurring along the corridors of Interstate-94 annexed to St. Cloud. Consequently, the Township's annual prosecution costs will be less than the \$10,000 estimated. (Gartland at 181-182; Erickson at 758-759; Hagelie at 882; Jopp at

1108-1109, 1308-1309; Exs. 211, 213 at 21-22).

198. Annexation of the proposed area to St. Cloud will not have a detrimental impact on the remainder of the Township to continue carrying on governmental functions, as any reduction in revenue will be largely offset by a reduction in expenditures for services to the area. (Ex. 213 at 21-23).

199. Including the St. Augusta town site in the area to be annexed would deprive the Township of a large portion of its revenues without a corresponding reduction in expenses and would constitute an undue hardship upon the remainder of the Township. The majority of the Township's tax base is located with the St. Augusta and Luxemburg town sites. (MB Ex. 7, MB Ex. 19 at 102-103, Twp. Ex. 103). Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. On January 14, 1999, St. Augusta Township submitted its petition for incorporation as the City of Neenah pursuant to Minn. Stat. § 414.02. The Township later sought to amend the proposed name of the city to the City of Ventura. All

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jurisdictional prerequisites have been met and St. Augusta Township's petition is properly before the AU for disposition.

2. On May 18, 1999, St. Cloud submitted its petition and resolution to annex a portion of St. Augusta Township into the City of St. Cloud. On the same date, pursuant to Minn. Stat. § 414.031, Frederick Schilplin and RCH Partnership submitted petitions requesting that their property located within St. Augusta Township be annexed to the City of St. Cloud. All jurisdictional prerequisites for

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the annexation petitions have been met and the petitions are properly before the AU for disposition.

3. That the Administrative Law Judge has jurisdiction in this matter under Minn. Stat. §414.01, 414.02, 414.031, 414.11, 414.12 and the September 29, 1999 Order of the Commissioner of Administration.

4. That the proper notice of hearing in this matter was given.

5. That portions of St. Augusta Township located in the Township's northern and central region, particularly the Luxemburg and St. Augusta town sites, are about to become urban or suburban in character.

6. That the southern one-third of St. Augusta Township is rural and will not become urban or suburban in character during the next 20 years.

7. That the existing Township form of government is not adequate to protect the public health, safety and welfare of the area proposed for incorporation.

8. That, except for the area sought to be annexed by the petitions of St. Cloud, Frederick Schilplin and RCH Partnership, the proposed incorporation is in the best interest of the Township.

9. That the primarily rural southern one-third of the Township has too few resources to continue carrying on the functions of government without undue hardship. It is the best interest of this area that it be included in the area being incorporated.

10. That granting St. Augusta Township's petition to incorporate all of the Township, except for the area proposed to be annexed to the City of St. Cloud by the petitions of the City of St. Cloud, Frederick Schilplin and RCH Partnership, is in the best interest of the Township.

11. That incorporation of the remaining St. Augusta Township will better enable the Township to obtain the long-term financing necessary to develop municipal sewer and water services.

12. That incorporation of the remaining Township will better enable the Township to protect future investments in needed public water and sewer infrastructure. The inherent instability of a township's borders and the potential for future annexations impedes a township's ability to plan or invest in infrastructure for water and sewer services.

13. That the remaining St. Augusta Township will be better able to protect the public health, safety and welfare of its residents as an incorporated city.

14. That the newly incorporated city's name shall be "City of Ventura".

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15. That Frederick Schilplin's property described in the petition for annexation identified as A-6107 is about to become urban or suburban in character.

16. That Schilplin's property would be better served by annexation to St. Cloud.

17. That RCH Property's property described in the petition for annexation identified as A-6107 is about to become urban or suburban in character.

18. That RCH Property's land would be better served by annexation to St. Cloud.

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19. That portions of the proposed annexation area described in St. Cloud's petition are about to become urban or suburban in character
20. That the area proposed for annexation by St. Cloud would be better served by annexation to St. Cloud.
21. That annexation of the area described in St. Cloud's petition, which includes the petitioned Schilplin and RCH properties, is in the best interest of the subject area.
22. That St. Cloud is in the best position to provide municipal water and sewer services to the proposed annexation area.
23. That St. Cloud is better able to protect and regulate the environmentally sensitive areas located within the proposed annexation area.
24. That St. Cloud is better able to protect the public health, safety and welfare of the proposed annexation area and its residents.
25. That the increase in revenues for St. Cloud bear a reasonable relationship to the monetary value of the benefits conferred upon the area sought to be annexed.
26. That the remainder of St. Augusta Township will not suffer undue hardship by virtue of the annexation of the area described in St. Cloud's petition.
27. That the remainder of St. Augusta Township will suffer undue hardship if the area defined as St. Augusta's town site is also annexed to St. Cloud.
28. That the citations to transcripts or exhibits in these Findings of Fact are not intended to indicate that all evidentiary support in the record has been cited.
29. That these conclusions are arrived at for the reasons set out in the Memorandum which follows and which is incorporated into these conclusions by reference.

Based on the following Conclusions, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED:

1. That the City of St. Cloud's request to amend its petition for annexation to include the St. Augusta town site is DENIED.
2. That the City of St. Cloud's petition for annexation is GRANTED.
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3. That Frederick Schilplin's petition for annexation is GRANTED.
4. That RCH Property's petition for annexation is GRANTED.
5. That the effective date of the annexations is March 10, 2000.
6. That St. Augusta Township's motion to amend its petition for incorporation to change the name of the proposed city from "City of Neenah" to "City of Ventura" is GRANTED.
7. That, excepting the property defined as the proposed annexation area in St. Cloud's petition for annexation, St. Augusta Township's petition for incorporation is GRANTED.
8. That the remaining St. Augusta Township, which is all of the Township except for the area proposed for annexation to St. Cloud by St. Cloud's petition and the area specified in the 1974 orderly annexation agreement, is hereby incorporated as the City of Ventura.
9. That the plan of government for the new City of Ventura shall be Optional Plan "A".

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The city council shall have five members, consisting of four councilpersons and the mayor. The mayor's term shall be two years.

10. That the City of Ventura shall elect all of its councilpersons and mayor at-large, and that there are no wards within the City of Ventura.

11. That the ordinances of St. Augusta Township shall continue in effect within the boundaries of the newly incorporated City of Ventura, until repealed or replaced by the governing body of the City of Ventura.

12. That the population of the new City of Ventura is determined to be approximately 3,057.

13. That all license privileges be maintained as permitted by St. Augusta Township including the number of liquor licenses already authorized by the State of Minnesota until repealed by the governing body of the new City of Ventura.

14. That upon incorporation, all money, claims or properties including real estate owned, held or possessed by the former Township, and any proceeds or taxes levied by such Township, collected and uncollected, shall become the property of and inure to the benefit of the new City of Ventura with full power and authority to use and dispose of for such public purposes as the council deems best subject to claims of the creditors. This will include cash reserves/fund balances of the town and all public property and equipment held by St. Augusta Township.

15. That St. Augusta Township's outstanding indebtedness, if any, is the financial obligation of the City of Ventura.

16. That the first election of officers for the new City of Ventura shall be held on Tuesday, May 2, 2000. Any person of legal voting age residing within the City of Ventura is eligible to vote at such election, subject to and consistent with the relevant provisions of law.

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17 That the hours of election shall be from 7:00 a.m. to 8:00 p.m.

18 That the polling for the election Albert Keppers,

place shall be the St. Augusta Town Hall and election judges of officers shall be as follows: Howard Cater, Marilyn Hurrle, Judy Meyer, and Ellen Zipp.

19 That the Acting Clerk for election purposes shall be Harlan Jopp.

20 That the Acting Clerk shall prepare the official election ballot. Affidavits of candidacy may be filed by any person legally eligible to hold municipal office not more than four weeks and not less than two weeks before the election. The two persons receiving the two highest number of votes for councilperson will be elected to terms ending January 1, 2004. The persons receiving the third and fourth highest number of votes for councilperson will be elected to terms ending January 1, 2002. The person receiving the highest number of votes for mayor shall be elected to a term ending January 1, 2002. As the aforementioned terms begin to expire, elections shall be held during the November general elections of the year

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preceding the above-referenced term expiration dates. Thereafter, the terms for city council members and the mayor shall be four (4) years and two (2) years respectively, as provided in Minnesota Statutes § 412.02. The ballot shall be composed so that each voter shall be permitted to vote for four persons for councilpersons at-large and one person for mayor. In all other respects, the election shall be conducted in conformity with the provisions of the Minnesota Statutes concerning the conduct of municipal elections insofar as applicable.

21. That the incorporation shall new municipal officers for be effective upon the election and qualification of new municipal officers of the City of Ventura as specified in Minnesota Statutes § 414.02, subd. 4.

Dated this 10th day of March 2000

Kenneth A. Nickolai

Chief Administrative Law Judge

Reported: Transcribed (eleven volumes).

MEMORANDUM

This is a consolidated proceeding under Chapter 414 to consider three petitions filed with the former Minnesota Municipal Board. On January 14, 1999, St. Augusta Township filed a petition to incorporate the entire Township, except for the area contained in the 1974 orderly annexation agreement with St. Cloud. On May 18, 1999,

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Frederick Schilplin and RCH Partnership filed a petition to annex to St. Cloud property they own in the northwest corner of the Township by Interstate 94 and Highway 15. And on the same date, the City of St. Cloud filed a petition to annex property located within St. Augusta Township, including the property owned by Schilplin and RCH Partnership.

In summary, the Administrative Law Judge concludes that the area proposed for annexation to the City of St. Cloud is about to become urban or suburban in character. The AU further concludes that annexation of this area to St. Cloud is necessary to protect the public health, safety and welfare and is in the best interest

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of the area. The Administrative Law Judge also concludes that the portion of the remainder of St. Augusta Township including the St. Augusta and Luxemburg town sites and the corridor between them is also becoming urban or suburban in character. And, although the southern onethird of the Township is primarily rural in character, the AU finds that incorporation of the entire remaining Township as the City of Ventura is in the area's best interest and is necessary to protect the public health, safety and welfare of the area. For clarity, the Administrative Law Judge will discuss the petitions and their related findings and conclusions in reverse order of filing.

St. Cloud's Petition for Annexation

On May 18, 1999, St. Cloud filed a petition and resolution requesting that certain property located within St. Augusta Township be annexed to St. Cloud. The property is more specifically described in Finding of Fact number six. The request to annex portions of St. Augusta Township to the City of St. Cloud is granted. The legal standards governing annexation of unincorporated property to an existing municipality are found in Minn. Stat. § 414.031. The statute sets out fourteen factors that must be considered in arriving at a determination. The factors are nearly identical to those that must be considered in an incorporation case under Minn. Stat. § 414.02. Findings on each of these factors have been made based on the evidence submitted in the record.

Following the listing of factors to be considered for annexation, the statute provides:

Based upon the factors, the board may order the annexation (a) if it finds that the subject area is now, or is about to become, urban or suburban in character, or (b) if it finds that municipal government in the area proposed for annexation is required to protect the public health, safety, and welfare, or (c) if it finds that the annexation would be in the best interest of the subject area. If only a part of a township is to be annexed, the board shall consider whether the remainder of the township can continue to carry on the functions of government without undue hardship. The board shall deny the annexation if it finds that the increase in revenues for the annexing municipality bears no reasonable relation to the monetary value of benefits conferred upon the annexed area. The board may deny the annexation (a) if it appears that annexation of all or a part of the property to an adjacent municipality would better serve the interests of the

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residents of the property or (b) if the remainder of the township would suffer undue hardship.¹⁵

Urban or Suburban in Character

The area of St. Augusta Township which St. Cloud proposes to annex will be discussed as three geographic components: (1) the area north and east of Interstate 94; (2) the area south of Interstate 94 and west of County Road 75; and (3) the area southeast of the St. Augusta town site and west of Interstate 94.

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The evidence amply demonstrates that the area north and east of Interstate 94 is about to become urban or suburban in character. This area was included in St. Cloud's 1993 comprehensive plan. Testimony established that there is increasing pressure for residential and commercial development along the southern and eastern portions of St. Cloud. Currently, several businesses are located just north of Interstate 94 in St. Cloud. Moreover, Township officials conceded in the hearing that the area north and east of Interstate 94 would be better served by the City of St. Cloud. Township officials argue, however, that annexation should not occur until St. Cloud is ready to provide municipal sewer and water services to the area. The evidence suggests that St. Cloud will be able to establish such services to this area within five to ten years. But the evidence also supports the need to plan for sewer and water services with stable geographic borders.

When arguing for incorporation as a municipality, St. Augusta Township emphasizes the importance of stable boundaries in planning for water and sewer services where there are pressures for urban or suburban development. This argument is persuasive and when applied to the area north and east of I-94, yields the conclusion that annexation should occur now and not at some unspecified date in the future. Even Township Planner Licht testified that, if it would facilitate St. Cloud's planning for the services in this area to annex this area immediately, then immediate annexation should be ordered.¹⁶ Moreover, as the Township has conceded that this area should eventually be part of St. Cloud, further discussion of the evidence related to this area is not necessary. The AU concludes that annexation of all Township land north and east of I-94 at this time is in the area's best interest.

The area south of Interstate 94 and west of County Road 75 is also becoming urban and suburban in character. This portion of the area proposed for annexation, however, contains wetlands and environmentally sensitive areas in need of protection. The proximity of freeway interchanges at each end of the strip will attract development such as the potential uses being discussed for the Hauck and Schilplin properties. On the eastern side of the northern strip, there is already existing a business park that has room for expansion. That business park receives its water from a common well and has a private septic system. And, given that the land in this area is not prime agricultural land, Township Planner Licht envisions increased demand for housing in this area. Despite evidence of increased development pressures, the Township has not planned for the extension of sewer or water to this area in the foreseeable future. Instead, the

·Minn. Stat. § 414.031, subd. 4.

¹⁶Licht at 1728.

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Township's comprehensive plan identifies this area as being within the secondary growth corridor. Areas within the secondary growth corridor are not expected to urbanize within the next 20 years.

The majority of this area, including Schilplin's and RCH Partnership's property will become urban or suburban within the next 20 years. Township zoning allows for development of the area. As shown on Municipal Board Ex. 8, there are already several residential housing developments in the areas. St. Cloud anticipates that it will be able to extend municipal sewer and water services to this area within the next 20 years. And, with respect to Schilplin's and RCH Partnership's property, St. Cloud anticipates

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providing sewer and water services within five to ten years. St. Cloud is already installing public sewer and water main improvements along 33rd Street South, parallel with and approximately one mile north of Interstate 94.

Finally, the area southeast of the St. Augusta town-site but west of Interstate 94 is also about to become urban or suburban in character. This portion of the Township proposed for annexation to St. Cloud abuts Interstate 94 and County Road 75. The St. Cloud wastewater treatment plant and the St. Cloud Industrial Park containing the New Flyer Bus manufacturing plant are just to the north and east of this area. A new interchange at the intersection of I-94 and County Road 75 will be constructed in this area in the near future. Demand for commercial and residential uses will increase with the completion of the interchange and the resulting increased traffic. In addition, the opening of the New Flyer Bus manufacturing plant on the border of St. Cloud and St. Augusta east of Interstate 94 will bring increased residential growth and ancillary businesses to the area.

Municipal Government Required to Protect Public Health, Safety and Welfare

The soils in the entire area proposed for annexation to St. Cloud are not suitable for septic system use. Consequently, continued development in this area increases the risk of septic system failures and poses a threat to the groundwater in the area. The presence of extensive wetlands only exacerbates the potential for environmental harm and drinking water contamination. St. Cloud is better able to provide this area with sewer and water services and thus lower the risk of ground water pollution. In fact, St. Cloud anticipates that it will be able to extend municipal services to some of those areas about to become urban or suburban within the next five to ten years. St. Cloud can quickly extend sewer and water services to the area located southeast of the St. Augusta town site because it is close to the existing treatment plant and there is an existing sleeve under Interstate 94 through which water and sewer pipes can be extended. St. Augusta Township, on the other hand, has no plans to provide sewer or water services to the proposed annexation area within the next 20 years. Given the potential for groundwater contamination from the use of septic systems, the AU concludes that annexation of the proposed area to St. Cloud is in the best interest of public health, safety and welfare of the area.

At the public hearing in this matter, Township residents living in the area proposed for annexation, with the exception of petitioners Schilplin and Hauck, voiced opposition to annexation. While the Administrative Law Judge is cognizant of their desire to maintain the present character of the property adjoining their lands, Township

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zoning currently allows development to continue in this area without plans to provide sewer or water services for the next twenty years. In the area proposed for annexation, 13 of 14 private wells were recently tested and nine of them showed elevated levels of nitrates. While only two had nitrate levels exceeding safety recommendations, these levels indicate that problems are developing. Annexation of this area to the City of St. Cloud will allow more immediate access to sewer and water services that are necessary to protect the public health from ground water contamination in the future.

In addition, both Township and St. Cloud officials envision that a large portion of the proposed annexation area located between County Road 136 and Highway 15 will not experience significant urban development due to the extensive wetlands in the area. St. Cloud has designated this area to become part of or compliment St. Cloud's planned Neenah Creek Regional Park. Despite the fact that the need for sewer and water services

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is not immediate in this area, the AU finds that this area should also be annexed to St. Cloud. Because of its more comprehensive set of environmental protection ordinances, the AU finds that St. Cloud will be better able to protect and regulate the environmentally sensitive features of this area. In addition, as this area is located in between areas that are seeing urban development, it is reasonable to keep the boundaries of the proposed annexation area contiguous by including this area.

Best Interest of the Subject Area! Remaining Township's Ability to Function

The Administrative Law Judge concludes that annexation of the proposed area to St. Cloud is in the best interest of the subject area. As stated above, significant portions of the proposed annexation area are or are about to become urban or suburban in character. St. Cloud is better able to provide municipal sewer and water services to these areas in the time frame when they will be needed. And given that the soils are not suited for septic system use, municipal services are needed to protect the public health, safety and welfare of the area. The AU also concludes that annexing the area proposed to St. Cloud will not cause undue hardship to the remainder of St. Augusta Township or adversely affect its ability to continue to carry on the functions of government.

Specifically, the Administrative Law Judge finds that the annexation of the proposed area will cause St. Augusta Township to lose approximately 14 percent of its tax base, amounting to approximately \$36,000 annually. And the remaining Township will lose approximately \$18,000 in Homestead Agricultural Credit Aid. This reduction in revenue, however, will be offset by reductions in Township expenditures to service the annexation area. The remaining Township will save approximately \$21,000 annually in road maintenance costs for the 8.7 miles of Township roads in the annexation area that it will no longer have to maintain. The remaining Township will also see savings in fire protection and future municipal prosecution costs. Accordingly, the AU concludes that any losses in revenue that the remaining Township will incur as a result of the annexation will be offset by savings the Township will realize in service expenditures. As a result, the annexation will not adversely impact the remaining Township's ability to carry out its governmental functions.

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Other Issues

St. Cloud's Available Land for Development

The Township argues that the land St. Cloud proposes to annex is not needed by the City since there is more than sufficient land for development already within the St. Cloud city limits. The Administrative Law Judge concludes that a calculation of St. Cloud's available acreage does not address the issues raised by the statutory criteria. Minn. Stat. § 414.031 allows annexation if it is in the best interests of the subject area or is necessary to protect the public health, safety and welfare. Whether St. Cloud has other land it could develop or re-develop for other uses to accommodate its growth is not an issue. The statute focuses on the needs of the land area that is proposed for annexation. Even if the statute were interpreted to focus on whether the annexing city needed the land for development, the Administrative Law Judge is convinced that annexation of these Township lands is appropriate. As explained by St. Cloud Planning Director Gartland, annexation will allow development pressures to be focused on land that is more suitable for development –because of its marginal use for other purposes and at the same time

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lessening the pressure to develop land suitable for and still in agricultural use on the western edge of the City.’⁷

Interstate 94 as Logical Barrier

Currently St. Augusta Township extends both north and east of 1-94. Although the Township concedes that the areas north and east of 1-94 should eventually become part of the City of St. Cloud, the Township maintains that annexation should not occur until St. Cloud is ready to extend sewer and water services to the area. In opposing St. Cloud’s annexation of this and the portions of land immediately south and west of 1-94, the Township argues that 1-94 is a formidable and logical barrier or boundary. Township Planner Licht testified about the role of 1-94 as a significant cultural and economic barrier between the Township and the City of St. Cloud. While this argument is superficially appealing, the evidence in the record shows that already 1-94 is a visual barrier only. Currently 57 percent of St. Augusta Township’s working residents are employed in St. Cloud. Schools are on the northern side of 1-94 as are shopping and recreation. The record also reflects that many other municipalities have areas divided by interstate highways.

Nor is the existence of 1-94 a barrier to the provision of public services. At the time of the construction of 1-94, a sleeve was placed under the freeway to allow for the extension of sewer and water services from St. Cloud facilities. The sleeve is located on the eastern end of the freeway, south and east of the St. Augusta town site. The presence of that sleeve means that 1-94 is not a barrier to the provision of services to the eastern portion of the area proposed for annexation. In addition, evidence presented by St. Cloud indicated that the City could provide utility service to properties on the western end of the area proposed for annexation (such as the Schilplin and Hauck properties) within five to ten years. While there may be some adverse consequences for neighborhood contiguity, the Administrative Law Judge is convinced that the need for public sewer and water services into these areas in the relatively near

¹⁷GarUand at 1859.

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future outweighs the diminished social connection these areas might have to St. Cloud if Interstate 94 was not present.

St. Cloud’s Request to Amend Annexation Petition to Include St. Augusta Town Site

By its post-trial memorandum, St. Cloud requests that the Administrative Law Judge amend the City’s annexation petition to include the St. Augusta town site if the AU concludes that this area is about to become urban or suburban. While the AU does find that the St. Augusta town site is about to become urban or suburban, the AU will not amend St. Cloud’s petition to include this site in its annexation area. The AU finds that if the St. Augusta town site were annexed to St. Cloud, it would deprive the remaining Township of a large portion of its revenues and the remaining Township would suffer undue hardship.¹⁸ Moreover, when St. Augusta Township attempted to submit evidence regarding the potential impact on the rest of the Township if the St. Augusta town site was annexed to St. Cloud, counsel for the City objected on the grounds of relevancy. Specifically, counsel for St. Cloud argued that evidence regarding the impact the loss of town site revenues would have on the remaining Township was beyond the scope of the petition for annexation. The AU sustained counsel’s objection.¹⁹ Consequently, the

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Township was foreclosed from developing a complete record on this issue as it was beyond the scope of the original annexation petition. For both of these reasons, St. Cloud's request to amend its annexation petition to include the St. Augusta town site is denied.

Schilplin and RCH Partnership's Petition for Annexation

Frederick Schilplin and RCH Partnership have petitioned to have their property annexed to the City of St. Cloud. Findings on each of the factors contained in Minn. Stat. § 414.031 have been made based on the evidence submitted in the record.

As stated above, the Administrative Law Judge may order annexation based on the factors if he finds the subject area is about to become urban or suburban in character, or if he finds that municipal government is required to protect the public health, safety and welfare; or if he finds that the annexation would be in the best interest of the subject area. If only a part of a township is to be annexed, the AU shall consider whether the remainder of the township can continue to carry on the functions of government without undue hardship. The AU must deny the annexation if he finds that the increase in revenues for the annexing municipality bears no reasonable relation to the monetary value of benefits conferred upon the annexed area.²⁰

Urban or Suburban in Character

Both Schilplin and RCH Partnership's properties are located in the northwest corner of St. Augusta Township. Schilplin's property is located in the southwest and southeast quadrants of the intersection of Interstate 94 and Highway 15. St. Cloud plans on constructing an interchange at the intersection of Highway 15 and 33(1 Street just north of Schilplin's property. Once built, the interchange will create a stronger

¹⁸ MB Ex. 7.

¹⁹ Jopp at 1129-1132.

²⁰ Minn. Stat. § 414.031, subd. 4.

impetus for growth to continue moving towards Schilplin's property. Given the high visibility of his property's location at the intersection of 1-94 and Highway 15, and the development pressures already existing in the southern portion of St. Cloud, Schilplin's property is about to become urban or suburban in character. Likewise, RCH Partnership's property, which is located south of Interstate 94 and east of Highway 15, is about to become urban or suburban in character. The Crossroads Shopping Center and a Holiday Inn are located approximately 3.5 miles north of RCH's property in St. Cloud. And several businesses are located nearby at the intersection of 1-94 and County Road 74.

Municipal Government Necessary to Protect Public Health and Safety

Both Schilplin's and RCH Partnership's properties are facing development pressures and both properties consist of soils rated "severe" or "poor" for septic system use. Under St. Augusta Township's comprehensive plan, however, both properties are located within the secondary growth corridor. According to the Township's plan, secondary growth corridors are not intended to urbanize within the next 20 years. In fact, St. Augusta Township has no plans to provide water and

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sewer treatment to Schilplin's or RCH's property within the next 20 years. On the other hand, St. Cloud estimates that it could provide sewer and water services to both properties within the next five to ten years. The Administrative Law Judge concludes that St. Cloud's ability to extend water and sewer services sooner will better protect the public health, safety and welfare of this area.

Best Interest of Subject Area

Given the existing developmental pressures, it is in the best interest of Schilplin's and RCH Partnership's properties to be annexed to St. Cloud. Both properties consist of soil rated "severe" to "poor" for septic system use. Unlike St. Augusta Township, which does not plan to extend water or sewer services to this area within the next 20 years, St. Cloud will be able to provide municipal services to Schilplin's and RCH's properties within five to ten years. Municipal services are necessary for the commercial and residential development that is anticipated in this area. In addition, the AU concludes that annexing these properties to St. Cloud will not adversely impact the remaining Township's ability to carry out its governmental functions. The owners of these two properties desire annexation although the majority of their neighbors oppose annexation to St. Cloud. As discussed above, while being cognizant of the neighbors' opposition to annexation, the AU is satisfied that annexation of these properties to St. Cloud is in the best interest of the area over the long run.

St. Augusta Township's Petition for Incorporation

St. Augusta Township seeks to incorporate itself as the City of Ventura.

Incorporation of a new municipality is governed by Minn. Stat. § 414.02. The request for incorporation is granted with the boundary adjustments discussed above. The statute sets out thirteen factors that must be considered in arriving at a determination. The factors are nearly identical to those that must be considered in an annexation request under Minn. Stat. § 414.031. Findings on each of these factors have been made, based on the evidence submitted in the record.

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Following the listing of factors to be considered for incorporation, the statute provides: Based upon these factors, the board may order the incorporation if it finds that (a) the property to be incorporated is now, or is about to become, urban or suburban in character or (b) that the existing township form of government is not adequate to protect the public health, safety and welfare, or (c) the proposed incorporation would be in the best interests of the area under consideration. The board may deny the incorporation if the area, or a part thereof, would be better served by annexation to an adjacent municipality. The board may alter the boundaries of the proposed incorporation by increasing or decreasing the area to be incorporated so as to include only that property which is now, or is about to become, urban or suburban in character, or may exclude property that may be better served by another unit of government. The board may also alter the boundaries of the proposed incorporation so as to follow visible, clearly recognizable physical features for municipal boundaries. In all cases, the board shall set forth the factors which are the basis for the decision.²¹

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Urban or Suburban in Character

When considering the statutory factors on which findings have been made, the Administrative Law Judge concludes that portions of St. Augusta Township are about to become urban or suburban in character. Specifically, the St. Augusta and Luxemburg town sites and the corridor between them are becoming urban or suburban in character. The entire Township currently has a population of approximately 3,293 people living in 1,600 households. The majority of the households are located in the town sites and the connecting corridor. For example, the town site of St. Augusta has 230 households and a review of the Township's plat map shows development occurring in a southwesterly direction from the St. Augusta town site to the Luxemburg town site. The Township's comprehensive plan also reflects this pattern by identifying the town sites as primary growth centers and the corridor as transitional agriculture.²² While 84% of the geographic land area of the Township is now agricultural in character, only eight percent of the Township's population earns their living by farming. As further evidence of the urban and suburban nature of the population, 57% of the Township's working residents are employed within the city limits of St. Cloud.

Although Township and City of St. Cloud officials differ as to the 20 year projected growth for St. Augusta Township, both agree that currently there are substantial development pressures in the area.²³ Prior to the enactment of the platting moratoriums, St. Augusta Township averaged 25-30 single family building permits per year. The pressure for development growth will be both from the north, as St. Cloud

²¹ Minn. Stat. § 41402, subd. 3.

²² MB Ex. 11 at 67.

²³ The Townships population estimate was higher in part because the Township did not anticipate the moratoriums on platting imposed by both the Township and the County. (Licht at 1615).

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further expands southward into the former St. Cloud Township towards Interstate 94, and from the east, as expansions of the St. Cloud industrial park result in an increased demand for additional housing in the area. The recent completion of the New Flyer Bus manufacturing plant near the border of St. Augusta Township is one example of development pressure. The plant is located by Interstate 94 and County Road 75. It currently employs 400 people and expects to add significantly more employees in the near future as production increases. The New Flyer Bus plant will not only create an increased demand for housing, but it will also create increased demand for ancillary support services and businesses. It is anticipated that some of these supporting businesses will locate in St. Augusta Township. And development growth on the eastern edge of the Township will be increased further by the new interchange planned for construction at the intersection of 1-94 and County Road 75. Finally, the Township will see increased development pressures due to the rapid growth occurring in the St. Cloud area in general. St. Cloud's population increased from 42,566 in 1980 to a present population of 62,781. And it is anticipated that St. Cloud will have a population of approximately 85,000 by the year 2020.

Township officials have developed a comprehensive plan and an implementing zoning ordinance based on their belief that the primary urban growth areas in the Township will be the St. Augusta and Luxemburg town sites followed by development in the corridor

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linking them. Township Planner Licht testified that the St. Augusta town site is the core from which the new city will develop and that urban services will be extended toward Luxemburg through the middle of the town after further development in the St. Augusta town site.²⁴ Examination of the list of current plats and a visual tour of the area confirm the reasonableness of the Township's expectations.²⁵

The southern one-third of the Township, however, is rural in character and is expected to remain so during the next 20 years. St. Augusta Township has planned this area to be an "agricultural preservation area" to preserve, promote and maintain the use of this land for commercial agricultural operations. The Township's goal is to restrict residential growth from occurring in and conflicting with long-term agricultural areas within its boundaries. Despite not being urban or suburban, it is still within the best interests of the area that this portion of the Township be incorporated into the new city as will be discussed below.

Adequacy of Form of Government to Protect Public Health, Safety and Welfare

The Township form of Government under which St. Augusta operates is not adequate to address the eventual need for sewer and water services in the area. The inherent instability of the Township's borders and the potential for further annexations greatly impedes the Township's ability to plan for or invest in infrastructure for public sanitary sewer and water. In addition, as an incorporated city, St. Augusta Township will be better able to obtain the long-term financing necessary for constructing the services. To accommodate growth the Township board anticipates that once incorporated as a city, it will begin the process of preparing for eventual municipal sewer and water services. Although it does not anticipate a need for those services in

²⁴ Licht at 1730-31. See also, Licht at 1683-1685.

²⁵ MB Ex. 10.

the immediate future, the zoning ordinance requires that all future plats be established with "ghost platting" to provide for low density development on private systems until sewer and water are available. Once those services are available, additional density is permitted along pre-determined lines allowing sewer and water facilities to be added while minimizing disruption to existing streets. This ghost platting is designed to minimize the cost of adding sewer and water services in the future while allowing for increased development density at the time. While the Township has established platting requirements and begun planning for public services, the Township needs firm jurisdictional boundaries in order to adequately plan for and finance the necessary public services.

In seeking to have the petition for incorporation denied, the City of St. Cloud has stressed that it is in the best position to provide necessary sewer and water to areas of the township as they are needed. In this proceeding, St. Cloud established that it has the water and sewer treatment capacity to provide services to the area it now proposes to annex. In addition, while St. Cloud's Exhibit 220 indicates that St. Cloud foresees the Luxemburg and St. Augusta town sites to be in its ultimate service area, it does not include the corridor of development anticipated between the town sites. St. Augusta, on the other hand, has done preliminary planning to serve the entire corridor and established platting requirements to facilitate that in the future.

St. Cloud owns and operates the sewage treatment plant that provides service to five

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cities in the area. That treatment plant is located just to the east of St. Augusta and is currently the closest plant to provide treatment for waste collected in the eastern portion of the Township. The current capacity of the plant is committed by contract to the five cities that are served. Despite these contractual commitments, St. Cloud established that it has the ability to provide sewage treatment to the area proposed for annexation in the near term. The City of Cold Spring also owns and operates a treatment plant located to the west of St. Augusta Township. St. Augusta Township has recently begun exploring the option of connecting to this plant since St. Cloud recently changed its policies to exclude a future city (such as Ventura) from contracting for sewage treatment. One of St. Cloud's witnesses, David Rusk further testified that using control over the sewage treatment plant was a legitimate means to force annexation of adjoining land.

The Administrative Law Judge is not convinced, however, that denying incorporation so that St. Cloud might annex and service additional portions of the Township at a later time is sound. As discussed previously, Ex. 220 clearly indicates that St. Cloud does not envision service to the entire corridor between St. Augusta and Luxemburg. In addition, the zoning requirements of St. Augusta with respect to ghost platting indicate the seriousness of Township officials in addressing these future needs. While the Township does not now have a financing plan in place, once stable municipal boundaries are established, financing for the mains and laterals is more likely to be secured and contract negotiations or permit applications can be made to arrange for treatment of waste collected.

This result is not inconsistent with the Joint Planning Board's latest draft plan for St. Cloud's ultimate urban service area. Through the multi-county area planning process St. Cloud has indicated its belief that the two town sites are in its "ultimate

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service area". That, however, does not require the mains and lateral sewers be controlled by St. Cloud. St. Cloud can provide sewage treatment for wastes collected in the area within its designated ultimate service boundary through contractual arrangements if St. Cloud changes its policy and allows new municipalities to connect with its plant. This arrangement is used currently by St. Cloud to provide sewage treatment for the adjacent cities of Waite Park, Sauk Rapids, Sartell, and St. Joseph. In addition, the Minnesota Pollution Control Agency does have the ability to resolve future controversies over sewage treatment capacity under some circumstances.

Moreover, the future ability to provide sewer mains and laterals as growth occurs in the St. Augusta-Luxemburg corridor requires planning today for that growth. St. Augusta's zoning ordinance and provision for ghost platting are efforts to direct near term growth in a manner consistent with the future need for sewer. And St. Augusta's arguments that it requires stable boundaries before it can secure long term financing necessary to develop municipal sewer and water services are convincing. The lack of stable boundaries supports the conclusion that the existing township form of government will not be adequate to protect the public health safety and welfare in the future. The Township has begun to investigate the provision of both sewer and water services. While the need for sewer and water in this area is not immediate, the need to begin planning for the services and to establish zoning policies consistent with those needs is immediate. The Township has established planning and zoning policies to eventually provide for these municipal

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services and now needs the stable boundaries of municipal status to pursue the financing and construction options for this anticipated corridor of growth.

St. Cloud pointed out that Minnesota law provides for an enhanced form of Township status for which St. Augusta would qualify, that allows for additional powers including the authority to establish sewer or water districts. While this possibility exists, the Township did not elect to pursue that path. Importantly, only with municipal status will the area have stability in its geographic borders so that it can plan and finance infrastructure improvements with the assurance that portions of the area to be served will not be subject to future annexations. The Administrative Law Judge concludes that the Township's arguments that the threat of future annexations will be a major impediment to its ability to plan and finance future infrastructure are reasonable.

Best Interests of the Area

Incorporation of the remaining portion of the Township is in the best interest of the remaining Township area (after annexation) when assessed by several factors. First, it is consistent with the expressed desires of current St. Augusta residents. The Administrative Law Judge interprets legislative language establishing a "best interests of the area" criteria as legislative intent to give weight to the expressed wishes of current residents of the area. In 1994, the Town Board of St. Augusta asked residents to vote on whether or not to seek incorporation as a municipality. Approximately 350 residents voted and a majority voted against incorporation. After a series of public meetings on the topic, a second vote was taken in 1995 and the result was 294 to 213 in favor of incorporation as a municipality. In addition, during this proceeding, the public was provided the opportunity to state for the record their views on the proposed

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incorporation and the proposed annexation. The support for incorporation and opposition to annexation among the over 100 residents in attendance was overwhelming.

It is also in the best interests of the area that the remaining Township be allowed to incorporate because only St. Augusta has begun planning for the corridor of growth that is anticipated between the two town sites. Municipal Board Ex. 8 indicates that growth is already underway. The combination of ghost platting, allowing higher densities when combined with shared services and the planning for municipal water and sewer to be provided in the future will meet the anticipated needs of this corridor.

Approximately the southern one-third of the township is now and appears likely to remain rural in character. The Township plan refers to this as agriculture preservation, but the actual zoning ordinance permits residential development. The Township zoning ordinance allows development of 4 dwellings per 40 acres. Higher densities are allowed with a conditional use permit. However, the ordinance does establish lot size limits and requirements of contiguity and other criteria which encourage more compact development as well as development focused on lands marginal for agricultural use. The objective of the requirements are to provide farmers with the ability to sell portions of their land that are less productive, while retaining the majority of the land in agriculture uses. The Township has planned for this area and is seeking to maintain its rural character. Township Planner Licht stressed that protection of this portion of the township could be better accomplished if incorporation were allowed.

The Administrative Law Judge concludes that this area should not remain a separate

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township, independent of the new city. The remaining township would be too small in population, tax base and other resources to effectively govern itself. Accordingly, the southern portion of the Township, although not becoming urban or suburban, should be included with the boundaries of the new city.

Motion to Amend Petition

The Township's motion to amend its petition for incorporation to change the name of the proposed city from Neenah to Ventura is granted. Although one party filed a written objection to the motion urging, among other arguments, that cities be named to only honor deceased individuals, there is no statutory impediment to allowing the Township to adopt the name of Ventura. The Rules of the former Municipal Board specifically allow for amendments to petitions and the Township complied with all applicable requirements.²⁶

Form of Government

As specified in Minn. Stat. 414.02, subd.3, the form of government for the new City of Ventura shall be "Optional Plan A". The Ordinances of the township shall continue in effect until repealed by the governing body of the new municipality. The number of council members shall be five, elected at large, as in the existing township. No evidence was presented for the record indicating a need for the Administrative Law

²⁶ Minn. Rule pt. 6000.0700.

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Judge to make findings establishing a ward system for election of council members due to a need for area representation.

K.A.N.

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OAH 82-0330-31721

STATE OF MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Petition for
Incorporation of Rice Lake Township
(MBAU Docket I-71)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This matter came on for hearing before Administrative Law Judge Barbara Case on November 21, 2014, at the Rice Lake Township Hall, 4107 W. Beyer Road, Duluth, Minnesota. Approximately 75 people attended the public testimony portion of the hearing, and 13 people offered comments on the record.

Michael C. Couri, Couri & Ruppe, P.L.L.P., appeared on behalf of Rice Lake Township (Township).

Rice Lake Township submitted Proposed Findings of Fact, Conclusions, and Order and a Post-Hearing Brief on January 12, 2015. The record closed on January 15, 2015.

STATEMENT OF ISSUE

Have the relevant factors defined in Minn. Stat. § 414.02 (2014) been established such that incorporation should be granted?

SUMMARY OF CONCLUSION

The Administrative Law Judge concludes that Rice Lake Township has established the relevant factors by a preponderance of the evidence and therefore Rice Lake Township's petition for incorporation is granted.

Based on the evidence in the record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural History

1. On June 10, 2014, Rice Lake Township adopted Resolution No. 14-06-18, titled "In the Matter of the Petition of Rice Lake Township for Incorporation Pursuant to Minnesota Statutes § 414.02", and thereby indicated its intent to incorporate from a township into a city form of government.¹

¹ In the Matter of the Petition of Rice Lake Township for Incorporation Pursuant to Minnesota Statutes § 414.02 (July 25, 2014) (Incorporation Petition).

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2. On or about June 11, 2014, Rice Lake Township served Notice of Rice Lake's Intent to Incorporate on each municipality and township contiguous to Rice Lake Township.²

3. On July 25, 2014, Rice Lake Township petitioned the Office of Administrative Hearings for incorporation.³

4. Rice Lake Township is located in St. Louis County (County), Minnesota.⁴

5. At the time of the Incorporation Petition's filing, the legal description of Rice Lake Township was:

All of that property located in Township 51 North, Range 14 West, St. Louis County, Minnesota, described as follows:

All of Sections 1 through 30, all of Sections 32, 33, and 34, and that part of Section 31 described as follows:

All of the southeast quarter.

AND

The east half of the northeast quarter of the northeast quarter,

AND

That part of the southeast 1/4 of the northeast 1/4 described as follows: Commencing at a point 495 feet north of the southeast corner running thence due north 495 feet thence due west 880 feet, thence due south 495 feet, thence due east 880 feet to the point of beginning.

AND

That part of the southeast 1/4 of the northeast 1/4 described as follows: commencing at the southeast corner of the southeast 1/4 of the northeast 1/4 running thence due north 495 feet, thence due west 880 feet, thence due south 495 feet thence due east 880 feet to the point of beginning.

AND

The west 1/2 of the west 1/2 of the north 1/2 of the north 1/2 of the southeast 1/4 of the northeast 1/4.

² Notice of the Town of Rice Lake's Intent to Incorporate (June 11, 2014).

³ Incorporation Petition; see also Minn. Stat. § 414.02.

⁴ See Incorporation Petition. 240 acres of this legally-described land has since been annexed to the City of Duluth.

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AND

The east 3/4 of the north 1/2 of the north 1/2 of the southeast 1/4 of the northeast 1/4.

AND

The northeast quarter of the Northwest quarter;

AND

The west 1/2 of the northwest 1/4 of the northeast 1/4;

AND

The west 1/2 of the west 1/2 of the east 1/2 of the northwest 1/4 of the northeast 1/4.⁵

6. An initial hearing was convened by the Office of Administrative Hearings on September 11, 2014 and continued for further proceedings.

7. On or about October 13, 2014, Rice Lake Township and the City of Duluth (Duluth) adopted a Joint Resolution of Township of Rice Lake and City of Duluth Designating 240 Acres Within the Township as Appropriate for Annexation and Approving an Orderly Annexation Agreement.⁶ The parties also executed an Orderly Annexation Agreement By and Between the Town of Rice Lake and the City of Duluth (First OA Agreement).⁷ The 240 acres covered by the 2014 OA Agreement is legally described as the Southeast Quarter and the South Half of the Northeast Quarter of Section 25, Township 51 North, Range 14 West, St. Louis County, Minnesota.⁸ The First OA Agreement stated that “[u]pon incorporation of any part of the Town of Rice Lake, the [240 acres] shall be annexed to the City of Duluth with no further action required by either the City or the Town.”⁹

8. The parties filed the First OA Agreement with the Office of Administrative Hearings on October 30, 2014, requesting that the 240 acres be annexed to the City of Duluth pursuant to Minn. Stat. § 414.0325 (2014).

9. On November 20, 2014, the Township adopted Resolution No. 14-11-29, Resolution Amending the Town of Rice Lake Incorporation Petition to Request the Annexation of a Portion of the Town of Rice Lake to the City of Duluth upon

⁵ See Incorporation Petition.

⁶ Exhibit (Ex.) 24.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

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Incorporation of the Town,¹⁰ and provided notice of this action to the proper parties on or about February 5, 2015.¹¹

10. After proper notice, the Administrative Law Judge reconvened the hearing on Rice Lake Township's Incorporation Petition on November 21, 2014.

11. At the hearing, Rice Lake Township filed an Amended Incorporation Petition reflecting the terms of the First OA Agreement and also offered the First OA Agreement into evidence.¹²

12. On February 11, 2015, the Office of Administrative Hearings dismissed the pending orderly annexation proceeding due to lack of compliance with statutory notice provisions.¹³

13. On February 24, 2015, Rice Lake Township and Duluth executed a second Orderly Annexation Agreement (Second OA Agreement) whereby the parties again agreed that 240 acres would be annexed by the City, without any necessary action by Rice Lake Township or Duluth "simultaneous with the granting of the Town's Incorporation Petition by the OAH" and "[u]pon incorporation of any part of the Town of Rice Lake."¹⁴ The parties filed the Second OA Agreement with the Office of Administrative Hearings on or about March 2, 2015.

14. On April 15 and 30, 2105, Rice Lake Township and the Duluth executed a third Orderly Annexation Agreement (Third OA Agreement) whereby the parties agreed that the 240 acres would be "immediately annexed to the City of Duluth" with no condition related to the timing of the granting of the Town's Amended Incorporation Petition.¹⁵

15. On May 30, 2015, Chief Administrative Law Judge Tammy Pust issued an Order of Annexation approving the annexation of the 240 acres legally described above to Duluth.¹⁶

¹⁰ Ex. 55.

¹¹ See Affidavit of Service (Feb. 5, 2015).

¹² Ex. 55.

¹³ Correspondence from the Office of Administrative Hearings (Feb. 11, 2015).

¹⁴ Orderly Annexation Agreement by and between the Town of Rice Lake and the City of Duluth (Feb. 24, 2015).

¹⁵ Orderly Annexation Agreement by and between the Town of Rice Lake and the City of Duluth (Apr. 30, 2015).

¹⁶ Order Approving Annexation (May 30, 2015).

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Incorporation Factors

Present population and number of households, past population and projected population growth for the subject area

16. In 2013, Rice Lake Township had a population of 4,082 residents and 1,623 households.¹⁷

17. Rice Lake Township's population is projected to grow between 18.8% and 29.5% by the year 2040.¹⁸

18. Rice Lake Township is the third largest community, measured by population, in the Duluth metropolitan area and the sixth largest in St. Louis County.¹⁹

19. After incorporation, the City of Rice Lake will rank in the top 20th percentile in population among Minnesota's cities.²⁰

20. Rice Lake Township is expected to lead other Minnesota townships within the Metropolitan Interstate Council (MIC) area in growth over the next 20 years.²¹

Quantity of land within the subject area; the natural terrain including recognizable physical features, general topography, major watersheds, soil conditions and such natural features as rivers, lakes and major bluffs

21. The incorporated area will consist of 20,464 acres (approximately 32 square miles).²²

22. The northern portion of Rice Lake Township contains two large wetland complexes which have inhibited development in the northern portion of the Township and effectively kept this area rural in nature.²³

23. There are two lakes within Rice Lake Township: Wild Rice Reservoir and Antoinette Lake.²⁴

24. The eastern half of Rice Lake Township is drained by Tischer Creek, Amity Creek, the East Branch of Amity Creek, the East Branch of Chester Creek, and the Lester River, all of which flow through the City of Duluth to Lake Superior. The Beaver River, the headwaters of Miller Creek, and several smaller waterways drain the western portion of Rice Lake flowing through Hermantown and Duluth and into Lake

¹⁷ Ex. 33.

¹⁸ Ex. 1, at 7.

¹⁹ *Id.* at 5.

²⁰ *Id.*

²¹ *Id.* at 7.

²² *Id.* at 9.

²³ Testimony (Test.) of John Powers.

²⁴ Ex. 1, at 14.

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Superior or the Duluth Harbor.²⁵

Present pattern of physical development, planning and intended land uses in the subject area including residential, industrial, commercial, agricultural, and institutional land uses and the impact of the proposed action on those uses

25. Approximately 43% of Rice Lake Township's land area has been developed for residential uses.²⁶

26. The southern tier of the Township has been developed at suburban densities for many years, with over 1,100 lots of less than 2.5 acres in size.²⁷

27. The middle tier of the Township is currently undergoing suburbanization with the recent platting of residential subdivisions and an increasing number of lots less than 5 acres in size.²⁸

28. New building permits averaged more than 30 per year in the 2000s prior to the economic downturn; the number of permits have recently begun to rise.²⁹

29. Portions of the southern part of Rice Lake Township have been designated as urban based on census data.³⁰

30. The MIC, the area planning organization for local, state and federal transportation planning, has designated nearly the entire southern one-third of the Township as urbanized area.³¹

31. The Western Lake Superior Sanitary District has included more than one-third of the Township within its Urban Service Boundary, designating this as land to which sanitary sewers should be extended.³²

32. The Duluth Urbanized Area Growth Impact Study performed by MIC indicates that the Township will develop predominately as residential, with a major commercial growth corridor up the entire length of County Highway 4 (Rice Lake Road).³³

²⁵ *Id.*

²⁶ *Id.* at 17.

²⁷ *Id.*

²⁸ *Id.* at 17, Table 3.3; Ex. 57; Test. of J. Powers.

²⁹ Ex. 1, at 19.

³⁰ *Id.* at 21.

³¹ *Id.* at 19-21.

³² *Id.* at 20, 22.

³³ Ex. 9, at 47, Map 5.

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The present transportation network and potential transportation issues, including proposed highway development

33. Rice Lake Township has approximately 83 miles of roads, 22 miles of which are Township roads. The remainder are county roads.³⁴

34. The Township has undertaken an extensive road reconstruction program, upgrading all but four miles of its roads over the past eight years.³⁵

35. The main commercial corridors through the Township are County Highway 4 (Rice Lake Road) and East Cavalry Road.³⁶ Both are collector roads that funnel commuter traffic into the City of Duluth. Most other collector roads in the Township are also county roads, which provide a good transportation network for future growth.³⁷

36. Abutting the Township on its southwest border is the Duluth International Airport (DIA). As the second largest airport in Minnesota after the Minneapolis-St. Paul facility, it employs 2,300 people and generates 4,400 jobs for the area.³⁸ DIA is an international port of entry into the U.S. and is home to the 148th Fighter Wing of the Air National Guard.³⁹ DIA is also home to significant industrial manufacturers and service operations, including Cirrus Aircraft Corporation (manufacturer of private airplanes), AAR Corporation (commercial jet refurbishing operations), and UPS and FedEx air cargo operations.⁴⁰

37. DIA is a major employer in the area and is expected to be an important source of commercial and residential growth in the Township.⁴¹

Land use controls and planning presently being utilized in the subject area, including comprehensive plans, policies of the Metropolitan Council; and whether there are inconsistencies between proposed development and existing land use controls

38. The Township has had a zoning ordinance in place since 1960.⁴²

39. The Township has established a planning commission.⁴³

³⁴ Ex. 1, at 25.

³⁵ *Id.* at 27; Test. of Joan Jauss.

³⁶ See Ex. 1, at 26-27.

³⁷ *Id.*

³⁸ Ex. 1, at 27-28.

³⁹ *Id.* at 28.

⁴⁰ *Id.*; Test. of J. Powers.

⁴¹ Test. of John Werner; Test. of J. Powers.

⁴² Ex. 1, at 32.

⁴³ Test. of J. Jauss.

EXHIBIT F

40. The Township has adopted and updated its Comprehensive Plan (1998 and 2007, respectively) and adopted a subdivision ordinance in 2014.⁴⁴

41. The Township adopted the State Building Code in 1992.⁴⁵

42. The Township has the planning and zoning infrastructure needed to operate as a city under Minnesota Statutes, chapter 462 (2014).⁴⁶

43. The Township has significant existing commercial and industrial development, and has planned for additional commercial growth along the Rice Lake corridor.⁴⁷

44. The Township's Comprehensive Plan more closely resembles the comprehensive plan of a city than a township, particularly given the amount of planned commercial development.⁴⁸

45. Rice Lake Township is a member of MIC and the Joint Powers Airport Zoning Board, which oversees critical zoning around DIA.

46. Under Minn. Stat. § 394.33 (2014), the Township's zoning ordinance must be consistent with, and at least as restrictive as, the County's zoning ordinance.

47. Although the Township enforces its own zoning ordinance, the Township's zoning map and classifications are different than those last employed by the County for property in Rice Lake Township.⁴⁹

48. The County's enforcement of its zoning ordinance in Rice Lake Township could cause confusion and uncertainty for the Township's property owners.⁵⁰ The Township's incorporation will eliminate this problem because cities, unlike townships, are not required to have their zoning consistent with the county's zoning.

Existing levels of governmental services being provided to the subject area, including water and sewer service, fire rating and protection, law enforcement, street improvements and maintenance, administrative services, and recreational facilities and the impact of the proposed action on the delivery of the services

49. Rice Lake Township employs three full-time staff, including a town clerk-treasurer, an administrative assistant, and a road maintenance person, and ten part-time employees.⁵¹

⁴⁴ Ex. 1, at 29, 34.

⁴⁵ *Id.* at 35.

⁴⁶ Test. of J. Powers.

⁴⁷ Ex. 1, at 16, Map 3.1, at 31, Map 5.1.

⁴⁸ Test. of J. Powers.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Test. of J. Jauss.

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50. As part of her duties, the town clerk-treasurer administers the affairs of the Township. This is an appointed position. The Township's office staff maintains regular business hours (7:30 a.m. to 4:30 p.m.) five days a week. It is uncommon for a township to have a full-time clerk.⁵²

51. The Township provides the following services to its residents:
- a. Road reconstruction program
 - b. Road maintenance including repair, grading, snowplowing, ditch mowing, brush cutting
 - c. Comprehensive planning
 - d. Zoning
 - e. Subdivision approval
 - f. Building inspection
 - g. Animal control
 - h. Fire and emergency services
 - i. Additional police services (via contract with the St. Louis County Sheriff's Office)
 - j. Airport mutual aid
 - k. Administrative services (burning permits, park reservations, special assessment searches, web page for information, local Township-produced newspaper, notary service, faxing service, dog licenses, pool filling services, fire code compliance inspection, neighborhood night out)
 - l. Park services
 - m. Recycling
 - n. Liquor licenses in conjunction with the County
 - o. Shoreland ordinance enforcement
 - p. Election services
 - q. Absentee ballot processing (Rice Lake is the only Township in St. Louis County to do so at its Town Hall rather than at the County)
 - r. Ordinance Enforcement
 - i. Fire arms
 - ii. Flood plain management
 - iii. Animal control
 - iv. Right of way
 - v. Sewer use regulations
 - vi. Bow hunting
 - vii. Water
 - viii. Fat, oils, grease
 - ix. Illicit discharge connection
 - x. Roads
 - xi. State Building Code
 - s. Storm water management
 - t. The Township has its books audited every year, a requirement for most cities but not for most Townships

⁵² *Id.*

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- u. Fair housing program
- v. Municipal water services
- w. Municipal sewer services⁵³

52. The breadth of services provided by the Township are similar to those normally found in a city and are a reflection of the level of suburbanization that has occurred in the Township.⁵⁴

53. Municipal water and sanitary sewer services have been provided by the Township for nearly 30 years.⁵⁵ The Township has recently expanded its water and sewer systems to accommodate the growth that has been occurring in the Township.⁵⁶

54. The Township's independent fire department, the oldest rural independent fire department in the state, responded to 192 calls in 2013, the majority of which were medical calls.⁵⁷ Calls have increased approximately 32% since 2009.⁵⁸

55. The Township owns and operates a park.⁵⁹

56. Police service is provided to the Township via contract with the St. Louis County Sheriff's Office.⁶⁰

57. Incorporation will provide Rice Lake Township with additional economic development powers, including tax increment financing (TIF) authority which is commonly used by cities as an economic development tool to help bring industrial development to a city.⁶¹

58. The existing sewer and water mains have been positioned to allow for the extension of sewer and water services to additional properties as demand for these services arises.⁶² The Township has invested millions of dollars in sewer and water infrastructure to serve its existing and future suburban development.⁶³

59. The Township has several pieces of maintenance equipment, including a road grader, a mini-excavator, several pick-up trucks, lawnmowers, plows, and a sander.⁶⁴

⁵³ *Id.*

⁵⁴ Ex. 1, at 36, 44.

⁵⁵ Test. of J. Werner.

⁵⁶ *Id.*

⁵⁷ Ex. 1, at 39, 40.

⁵⁸ *Id.* at 40.

⁵⁹ Test. of J. Jauss.

⁶⁰ Test. of Ross Litman.

⁶¹ Test. of Tammy Omdal; Test. of J. Powers.

⁶² Test. of J. Werner.

⁶³ *Id.*

⁶⁴ Ex. 39.

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60. The Township has a three-person Town Board, consisting of two board members and one chairperson. The Township also has a Planning and Zoning Commission, a Park Commission, a Board of Equalization, and a Board of Adjustment.⁶⁵

61. Incorporation will not reduce the quality, quantity, or scope of any of the services currently provided by the Township.⁶⁶

62. The Township effectively operates as a city. It administers its own zoning and subdivision regulations and conducts its own planning. It furnishes most of the services of a city, including sanitary sewer and municipal water, fire protection, street improvement and maintenance, administrative services, and parks and recreation services. The Township will continue to perform these services after incorporation.

63. Following incorporation, the Township will need to provide certain additional services to its residents that are currently provided by the County. The Township will need to contract with a law firm for prosecution of misdemeanors and gross misdemeanors committed within its jurisdiction. The Township estimates that this service will cost between \$10,000 and \$15,000 per year.⁶⁷

Existing or potential environmental problems and whether the proposed action is likely to improve or resolve these problems

64. There are no known environmental problems in the Township which affect the incorporation analysis.⁶⁸

Fiscal impact on the subject area and adjacent units of government, including present bonded indebtedness; local tax rates of the county, school district and other governmental units, including, where applicable, the net tax capacity of platted and unplatted lands in the division of homestead and nonhomestead property; and other tax and governmental aid issues

65. Incorporation will have a net neutral financial effect upon the Township.⁶⁹

66. There is no evidence in the record to show that incorporation will have an impact upon the local tax rates of the County, the school districts serving Rice Lake Township, or any other governmental unit.

67. Incorporation is not expected to affect tax rates.⁷⁰

⁶⁵ Test. of J. Jauss.

⁶⁶ Ex. 1, at 44.

⁶⁷ Test. of J. Jauss.

⁶⁸ Ex. 1, at 45.

⁶⁹ Test. of T. Omdal.

⁷⁰ *Id.*

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68. The Township will incur a small increase in city council member expenses, an increase of approximately \$10,000 to \$15,000 in annual prosecution costs,⁷¹ a decrease of approximately \$18,000 in state gas tax money,⁷² and an estimated \$30,000 increase in local government aid from the state as a result of incorporation.⁷³

69. The Township had bonded indebtedness of \$8,240,706 as of December 31, 2013.⁷⁴

70. The Township has an A1 bond rating from Moody's based on the Township's sound financial operations and strong reserves.⁷⁵ This is a good bond rating.⁷⁶ It is uncommon for townships to have bond ratings, but the rating is common for a city with a population similar to the Township's population.⁷⁷

71. The Township is in sound financial condition.⁷⁸

72. The Township is not currently able to engage in TIF. After incorporation, the Township could utilize TIF to encourage economic development and redevelopment.⁷⁹

73. Incorporation would allow the Township to stabilize its tax base by solidifying its borders, thus putting the Township in a better position to engage in budgeting for long-term project planning.⁸⁰

74. The Township has the necessary resources to provide for its economical and efficient operation as a city.

75. The Township's budget has increased from \$315,000 in 2000 to \$1,185,000 in 2015.⁸¹

76. The annual levy is presented to the Township residents for approval at the annual meeting in March. Any eligible voter who attends the meeting can vote on the proposed budget. There are approximately 2,600 eligible voters in the Township.⁸² At the meeting, the residents vote on the amount of money that will be levied by the Township to support its proposed budget. Approximately 20 to 25 people typically

⁷¹ Test. of J. Jauss.

⁷² *Id.*

⁷³ Test. of T. Omdal.

⁷⁴ Test. of J. Jauss.

⁷⁵ Ex. 40.

⁷⁶ Test. of T. Omdal.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ Test. of J. Jauss.

⁸² *Id.*

EXHIBIT F

attend the annual meeting and vote on the levy after approximately an hour to an hour and one-half review and discussion of the budget.⁸³

77. The low participation of Township electors makes the budget approval process inconsistent from year to year, such that it is difficult for the Township to engage in long-term financial planning.⁸⁴ After incorporation, both the budget and the levy would be developed and approved by the city council.

Relationship and effect of the proposed action on affected and adjacent school districts and communities

78. There is no evidence in the record indicating that the Township's incorporation would impact the three school districts serving the Township.

79. All adjacent townships have passed resolutions supporting the Township's incorporation.

80. The City of Duluth is the only city abutting the Township. Duluth has agreed not to oppose the Township's incorporation.⁸⁵

Whether delivery of services to the subject area can be adequately and economically delivered by the existing government

81. While the Township is currently delivering cost-effective services to its residents, a change in the form of government would allow the Township to deliver those services more economically.⁸⁶

82. The threat of annexation and the limited electorate participation in the budgeting and levy process led to an instability in funding. This instability hinders the Township's ability to make long-term capital investments, such as the acquisition of a new fire hall or the replacement of a deficient water main in East Calvary Road.⁸⁷

Analysis of whether necessary governmental services can best be provided through the proposed action or another type of boundary adjustment

83. After incorporation, the Township will be able to deliver the necessary governmental services to the approximately 32 square miles within its jurisdiction. The Township is urban and currently operating similarly to a city. It furnishes many city services, including sanitary sewer, municipal water, fire protection, street improvement and maintenance, administrative services, and parks and recreation services. It has a professional administrative staff. It has adopted and administers its own zoning and

⁸³ Test. of J. Werner.

⁸⁴ Test. of J. Powers.

⁸⁵ Ex. 24, ¶ 7.

⁸⁶ Ex. 1, at 48-49.

⁸⁷ Test. of J. Werner.

EXHIBIT F

subdivision ordinances. It prepares and administers its budget. Incorporation will provide financial stability because the Township will no longer be subject to annexation by adjacent cities, or the uncertainty of the budget adoption process at the annual meeting. The Township will also have the benefit of economic development tools such as tax increment financing.

84. There is no evidence in the record demonstrating that governmental services could best be delivered by another type of boundary adjustment.

Degree of contiguity of the boundaries of the subject area and adjacent units of local government

85. The Township's boundaries have remained the same for approximately 100 years, with the exception of small annexations of land for use by DIA and the recent orderly annexation of 240 acres to the City of Duluth. The current boundaries are easy to identify and administer.

86. The evidence in the record fails to indicate that annexation of any portion of the Township would serve a purpose.

Analysis of the applicability of the State Building Code

87. The State Building Code (Code) is currently enforced by the Township.⁸⁸ The Township employs a building official to administer the Code.⁸⁹ The Township will still be subject to the Code after incorporation.⁹⁰

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge has jurisdiction in this matter under Minnesota Statutes, chapter 414 (2014) and Minnesota Rules, part 6000 (2015).

2. The jurisdictional prerequisites have been met and the petition is properly before the Administrative Law Judge for disposition.

3. Proper notice of the hearing was given.

4. Rice Lake Township has the necessary resources to provide for its economical and efficient operation as a city under Minn. Stat. § 414.01, subd. 1a(3).

⁸⁸ Ex. 38; Test. of J. Jauss.

⁸⁹ Test. of J. Jauss.

⁹⁰ See Minn. Stat. § 326B.121 (2014).

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5. Rice Lake Township is suburban in character.⁹¹ The Township furnishes a full array of municipal services and has experienced significant residential and commercial development.

6. Incorporation is necessary to protect the public health, safety, and welfare of Rice Lake Township.⁹²

7. Incorporation is in the best interests of Rice Lake Township.⁹³

8. No part of Rice Lake Township would be better served by annexation to an adjacent municipality.⁹⁴

Based on the Conclusions of Law, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED THAT:

1. The Amended Petition for Incorporation of Rice Lake Township (1-71) is **GRANTED**.

2. Rice Lake Township shall be incorporated as the City of Rice Lake.

3. The incorporated City of Rice Lake shall consist of all property within Rice Lake Township.

4. The incorporation shall be effective upon the election and qualification of the new city council as set out in Paragraph 5 of this Order.

5. The form of government for the city shall be "Optional Plan A." An election of a mayor and four council members shall be held on October 13, 2015. Joan Jauss shall be the acting clerk for the election and shall prepare the official ballot. Affidavits of candidacy shall be filed not more than four weeks and not less than two weeks before the date of the election. The polling place shall be the Rice Lake Township Hall. The election judges shall be appointed from those serving in the last Town election or previous Town elections. The hours of the election shall be 7:00 a.m. to 8:00 p.m. Candidates shall be permitted to file for the position of Mayor whose term shall expire on December 31, 2016; a Council Member seat whose term shall expire on December 31, 2016; or a Council Member seat whose term shall expire on December 31, 2018. The two candidates filing for the Council Member seats expiring on December 31, 2016 who receive the most votes shall be elected to terms ending

⁹¹ See Minn. Stat. § 414.02, subd. 3(b)(1).

⁹² See *id.*, subd. 3(b)(2).

⁹³ See *id.*, subd. 3(b)(3).

⁹⁴ See *id.*, subd. 3(c).

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December 31, 2016. The two candidates filing for the Council Member seats expiring on December 31, 2018 who receive the most votes shall be elected to terms ending December 31, 2018. As the aforementioned terms begin to expire, elections shall be held during the November general elections of the year of the above-referenced term expiration dates, commencing with the general election to be held on November 8, 2016. Thereafter, the terms for City Council Members and the Mayor shall be for four years and two years respectively, as provided in Minn. Stat. § 412.02. Municipal elections shall be held during the November general election in even years. The position of Mayor and all Council Member positions shall be at-large positions.

6. In all other respects, the election shall be conducted in conformity with the provisions of the Minnesota Statutes concerning the conduct of municipal elections.

7. The ordinances of Rice Lake Township as well as all other land use and planning controls, and all licensing privileges, shall remain in effect within the boundaries of the City of Rice Lake until repealed or replaced by the new governing body of the City of Rice Lake.

8. Upon incorporation, all money, claims, or properties including real estate owned, held, or possessed by the former Rice Lake Township, and any proceeds or taxes levied by Rice Lake Township, collected and uncollected, shall become the property of the City of Rice Lake with full power and authority to use and dispose of for such public purposes as the City Council deems best, subject to claims of creditors. This will include cash reserves and fund balances of the Township and all public property and equipment held by Rice Lake Township.⁹⁵

9. Rice Lake Township's outstanding debt will become the financial obligation of the City of Rice Lake.⁹⁶

10. This Order is effective August 20, 2015.

11. Pursuant to Minn. Stat. § 414.12, subd. 3, the cost of these proceedings shall be 100 percent the responsibility of Rice Lake Township.

Dated: August 20, 2015

s/Barbara J. Case
BARBARA J. CASE
Administrative Law Judge

⁹⁵ See Minn. Stat. § 414.067, subd. 2.

⁹⁶ See *id.*

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NOTICE

This Order is the final administrative order in this case under Minn. Stat. §§ 414.02, .07, .09, .12. Pursuant to Minn. Stat. § 414.07, subd. 2, any person aggrieved by this Order may appeal to St. Louis County District Court by filing an Application for Review with the Court Administrator within 30 days of this Order. An appeal does not stay the effect of this Order.

Any party may submit a written request for an amendment of this Findings of Fact, Conclusions of Law, and Order within seven days from the date of the mailing of the Order pursuant to Minn. R. 6000.3100 (2015). However, a request for amendment shall not extend the time of appeal from this Order.

MEMORANDUM

At the November 21, 2014, hearing, the Township filed an Amended Incorporation Petition requesting that approximately 240 acres of property within the Township be excluded from the incorporation and instead be annexed to Duluth following the incorporation of the Township.⁹⁷ But the Administrative Law Judge does not have jurisdiction to address matters of orderly annexation in the incorporation proceeding.⁹⁸ And, under the plain language of the statute, the City cannot annex an area that has been incorporated.⁹⁹ It was therefore necessary for the annexation to occur before the incorporation. This was effectuated by the parties' Third OA Agreement.

It is also worth acknowledging the Township's admirable sense of community which was pronounced throughout the public hearing. Although the southern portion of the Township is more developed, while the northern portion continues to be largely rural, the Township's residents have indicated their desire to remain a unified Rice Lake throughout these proceedings. This dynamic further supports incorporation of Rice Lake Township in its entirety.

B. J. C.

⁹⁷ Ex. 55.

⁹⁸ See Minn. Stat. §§ 414.02, .0325.

⁹⁹ Minn. Stat. § 414.0325, subd. 1.

EXHIBIT G

OAH 71-0331-38560

STATE OF MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Orderly Annexation
of Certain Real Property to the City
of Farmington from Empire Township
(MBAU Docket OA-1387-2)

ORDER APPROVING ANNEXATION

Joint Resolution R19-08, an Orderly Annexation Agreement Between Empire Township and the City of Farmington (Joint Resolution to Designate), was adopted by the City of Farmington (City) and the Empire Town Board (Township) on March 19, 2008, designating certain real property for orderly annexation pursuant to Minn. Stat. § 414.0325 (2022).

The City and Township amended their Orderly Annexation Agreement by adopting Resolution No. R36-22/Empire Resolution No. 2022-5B, Amendment to Joint Resolution/Orderly Annexation Agreement (Amendment to Joint Resolution to Designate) on May 15, 2022, and May 26, 2022, respectively, amending Paragraph 8 of the Joint Resolution to Designate. The Amendment to Joint Resolution to Designate provides that real property designated for annexation that has not previously been annexed under the parties' Orderly Annexation Agreement will be annexed to the City upon issuance of an order from this tribunal under Minn. Stat. § 414.02 (2022), incorporating any portion of the Township.

Now pending before this tribunal is Empire Township Resolution No. 2022-7B/Resolution No. R54-22 (Joint Resolution to Annex) adopted by the City on July 18, 2022, and the Township on July 26, 2022. The Joint Resolution to Annex requests annexation of certain real property (Property) legally described as follows:

Section 19, Township 114, Range 19 West:

That part of the Southeast $\frac{1}{4}$ Quarter of Section 19, Township 114, Range 19 lying west of the right of way of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company located in Dakota County, Minnesota.

Section 29, Township 114, Range 19 West:

The Southeast Quarter of Section 29, Township 114 North, Range 19 West.

AND

The south half of the Southwest Quarter of Section 29, Township 114 North, Range 19 West, except that property already within the City of Farmington.

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AND

Lot 1, Block 1, Church of St. Michael Cemetery

AND

That part of the West 331.0 feet of the North one-half (N $\frac{1}{2}$) of the Southeast Quarter (SE $\frac{1}{4}$) of Section 29, Township 114, Range 19, lying North of the South 658.5 feet thereof.

AND

That part of the South $\frac{1}{2}$ of the Northwest $\frac{1}{4}$, of Section 29, Township 114, Range 19, Dakota County, Minnesota described as follows:

Commencing at the North quarter corner of Section 29; thence on an assumed bearing of due South along the North quarter line of said Section 29 a distance of 2262.83 feet; thence North 89 degrees 47 minutes West and parallel with the West quarter line of said Section 29 a distance of 200.00 feet to the point of beginning; thence South 54 degrees 30 minutes West a distance of 115.00 feet; thence North 18 degrees 22 minutes West a distance of 247.42 feet, more or less, to the centerline of County State Aid Highway No. 66 as it now exists; thence Northeast along said centerline a distance of 193.5 feet, more or less, to a point on said centerline which lies due North 257.30 feet, more or less, from the point of beginning; thence due South 257.30 feet, more or less, to the point of beginning.

AND

The following described tracts, pieces of parcels of land situate, lying and being in the County of Dakota and State of Minnesota, to-wit:

That part of the South one half (S $\frac{1}{2}$) of Northwest quarter (NW $\frac{1}{4}$) of Section Twenty nine (29), Township One hundred fourteen (114), Range Nineteen (19) Dakota County, Minnesota, described as follows:

Commencing at the N $\frac{1}{4}$, corner of Section 29; thence on an assumed bearing of due south along the north-south $\frac{1}{4}$ line of said Section 29 a distance of 2262.83 feet; thence North 89 degrees 47 minutes West and parallel with the east-west $\frac{1}{4}$ line of Section 29, a distance of 200.00 feet; thence South 54 degrees 30 minutes West a distance of 346.00 feet; thence South 37 degrees 30 minutes West a distance of 19.00 feet to the point of beginning; thence continuing South 37 degrees 30 minutes West a distance of 159.40 feet; thence North 47 degrees 47 minutes West a distance of 330.54 feet more or

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less to the centerline of CR #66 as it now exists; thence in a north-easterly direction along said centerline a distance of 144.28 feet more or less to a point on said centerline which bears North 51 degrees 30 minutes West from the point of beginning; thence South 51 degrees 30 minutes East a distance of 285.45 feet more or less to the point of beginning. Said tract contains 1.0 acres, more or less, and is subject to existing road easements. According to the Government Survey thereof.

AND

All that part of the Northwest Quarter (NW $\frac{1}{4}$) of Section Twenty-Nine (29), Township One Hundred Fourteen (114), Range Nineteen (19), described as follows: Commencing at the intersection of the East line of the NW $\frac{1}{4}$ of said Section 29 and the centerline of State Aid Road Number 66 as now laid out and constructed; thence South to a point on the East line of said NW $\frac{1}{4}$ which point is distant 475 feet north of the Southeast corner thereof; thence West parallel with the South line of said NW $\frac{1}{4}$ a distance of 200 feet; thence North parallel with the East line of said NW $\frac{1}{4}$, to the intersection with the centerline of State Aid Road Number 6; thence in a Northeasterly direction along said centerline to the point of commencement.

AND

That part of the Southeast Quarter (SE $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) of Section Twenty-nine (29), Township One Hundred Fourteen (114), Range Nineteen (19), described as follows: Commencing at the North One Quarter (N $\frac{1}{4}$) corner of Section Twenty-Nine (29); thence on an assumed bearing of due south along the north-south one quarter line of said Section Twenty-Nine (29), a distance of 2262.83 feet, thence North 89° 47' West and parallel with the east-west one-quarter line of Section Twenty Nine (29), a distance of 200.00 feet; thence South 54° 30' West a distance of 115 feet to the point of beginning; thence continuing South 54° 30' West a distance of 231.00 feet; thence South 37° 30' West 19.00 feet; thence North 51° 30' West, a distance of 285.45 feet, more or less, to the centerline of Dakota County Road No. 66 (C.R. #66) as it now exists; thence northeasterly along said centerline a distance of 402.00 feet more or less, to a point on said centerline which bears North 18° 22' West from the point of beginning; thence South 18° 22' East a distance of 247.42 feet more or less to the point of beginning according to the Government Survey thereof.

AND

That part of the South $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of Section 29, Township 114, Range 19, Dakota County, Minnesota, described as follows:

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Commencing at the North $\frac{1}{4}$ corner of Section 29, thence on an assumed bearing of due South along the North $\frac{1}{4}$ line of said Section 29 a distance of 2,167.83 feet to the point of beginning thence continuing South a distance of 95.00 feet; thence North 89 degrees 47 minutes West a distance of 200.00 feet; thence North and parallel with said North $\frac{1}{4}$ line a distance of 95.00 feet; thence South 89 degrees 47 minutes East a distance of 200.00 feet to the point of beginning, according to the United States Government Survey thereof and situated in Dakota County, Minnesota.

AND

That part of the Southeast Quarter ($SE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$) of Section Twenty Nine (29) Township One Hundred Fourteen (114), Range Nineteen (19) described as follows:

Beginning at the Southeast corner of the Northwest Quarter ($NW\frac{1}{4}$) running thence North along the East line of said Northwest Quarter ($NW\frac{1}{4}$) a distance of 260 feet to the actual point of beginning of the property to be described, thence continuing North along said East line a distance of 120 feet to a point which is 2262.83 feet south of the North Quarter corner of said section, thence North 89° 47' West a distance of 200 feet, thence South a distance of 120 feet to a point which is 260 feet North of the South line of said Northwest Quarter ($NW\frac{1}{4}$) thence East a distance of 200 feet to the actual point of beginning according to the Government survey thereof; and subject to existing Public road easement along the east line.

AND

That part of the Southeast Quarter ($SE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$) of Section 29, Township 114, Range 19, described as follows:

Commencing at the Northeast corner of said Northwest Quarter ($NW\frac{1}{4}$); thence South along the East line of said Southeast Quarter ($SE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$) a distance of 2262.83 feet; thence North 89 degrees 47 minutes West a distance of 200 feet to the point of beginning; thence South 54 degrees 30 minutes West a distance of 346 feet; thence South 37 degrees 30 minutes West a distance of 19 feet; thence South 37 degrees 30 minutes West a distance of 159.40 feet; thence South 47 degrees 47 minutes East to a point on the South line of said Southeast Quarter ($SE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$), said point being 550.10 feet from the Southeast corner of the Southeast Quarter ($SE\frac{1}{4}$) of the Northwest corner; thence easterly along said South line to the Southeast corner of said Southeast Quarter ($SE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$); thence northerly along the East line of said Southeast Quarter ($SE\frac{1}{4}$)

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of the Northwest Quarter (NW $\frac{1}{4}$) a distance of 260 feet; thence North 89 degrees 47 minutes West a distance of 200 feet; thence northerly on a line parallel with said East line of the Southeast Quarter (SE $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) to the point of beginning and there terminating.

Section 30, Township 114, Range 19 West:

That part of the North One-Half (N $\frac{1}{2}$) of the Southeast Quarter (SE $\frac{1}{4}$) of Section Thirty (30), Township One Hundred Fourteen (114), Range Nineteen (19) lying West of the right-of-way of the Chicago, Milwaukee, Saint Paul and Pacific Railway Company excepting therefrom the following:

The South 30.00 feet of the East 275.00 feet of the West 384.00 feet of the Northwest one-quarter (NW $\frac{1}{4}$) of the Southeast Quarter (SE $\frac{1}{4}$) of Section Thirty (30), Township One Hundred Fourteen (114), Range Nineteen (19).

AND

That part of the South $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of Section 30, Township 114, Range 19 lying West of the railroad right of way, also including the East $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of Section 30, Township 114, Range 19, Dakota County, Minnesota.

AND

The South 30.00 feet of the East 275.00 feet of the West 384.00 feet of the Northwest one-quarter (NW $\frac{1}{4}$) of the Southeast Quarter (SE $\frac{1}{4}$) of Section Thirty (30), Township One Hundred Fourteen (114), Range Nineteen (19), Dakota County, Minnesota.

AND

That part of the North Half of the Northeast Quarter (N $\frac{1}{2}$ of NE $\frac{1}{4}$) of Section Thirty (30), Township One Hundred Fourteen (114), Range Nineteen (19) lying west of the right-of-way of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

AND

Linden Street (Portion thereof)

That part of the Southeast Quarter of Section 30, Township 114, Range 19, Dakota County, Minnesota described as follows:

Beginning at the intersection of the south line of said Southeast Quarter and the north extension of the west line of 5th Street in the

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Town of Farmington, said Dakota County; thence north along said north extension, a distance of 150.00 feet; thence east parallel with said south line of the Southeast Quarter, a distance of 290.40 feet to the intersection with the herein described Line 1; thence southerly along said Line 1, a distance of 150.00 feet to said south line of the Southeast Quarter; thence westerly along said south line of the Southeast Quarter, a distance of 290.40 feet to said point of beginning.

Line 1

Commencing at the intersection of said south line of the Southeast Quarter and said north extension of the west line of 5th Street; thence easterly along said south line of the Southeast Quarter, a distance of 290.40 feet to a point hereinafter referred to as Point A; thence easterly along said south line of the Southeast Quarter to a point which lies 940 feet West of the southeast corner of said Southeast Quarter; thence North and parallel to the east line of said Southeast Quarter, a distance of 200.00 feet; thence West and parallel to said south line of the Southeast Quarter to a point which lies 200.00 feet North of the herein described Point A being the point of beginning of the line to be described, thence southerly along said Line 1, a distance of 200.00 feet to said Point A and said Line 1 there terminating.

Excepting therefrom land already within the City of Farmington.

Section 32, Township 114, Range 19 West:

All property located in Section 32 that is not currently within the City of Farmington.

Based upon a review of the Joint Resolution to Designate, the Amendment to Joint Resolution to Designate, and the Joint Resolution to Annex, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

ORDER

1. Pursuant to Minn. Stat. § 414.0325, the Joint Resolution to Annex is deemed adequate in all legal respects and properly supports this Order.
2. Pursuant to the terms of the Joint Resolution to Designate, the Amendment to Joint Resolution to Designate, and the Joint Resolution to Annex, and this Order, the Property is **ANNEXED** to the City.

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3. Pursuant to Minn. Stat. § 414.036 (2022), the City will reimburse the Township as stated in the Joint Resolution to Designate.

Dated: August 31, 2022


JESSICA A. PALMER-DENIG
Administrative Law Judge

NOTICE

This Order is the final administrative order in this case under Minn. Stat. §§ 414.0325, .07, .09, .12 (2022). Pursuant to Minn. Stat. § 414.07, subd. 2, any person aggrieved by this Order may appeal to Dakota County District Court by filing an Application for Review with the Court Administrator within 30 days of this Order. An appeal does not stay the effect of this Order.

Any party may submit a written request for an amendment of this Order within seven days from the date of the mailing of the Order pursuant to Minn. R. 6000.3100 (2021). However, no request for amendment shall extend the time of appeal from this Order.

MEMORANDUM

In their Joint Resolution to Designate adopted in 2008, the parties agreed to the orderly annexation of certain designated property within the Township to the City. The 2008 agreement provided that, in the event that the Township sought to incorporate in the future, the City would support the Township's petition.

The City and Township subsequently amended their Orderly Annexation Agreement by adopting the Amendment to Joint Resolution to Designate. Under their prior agreement, the parties had not specified incorporation of the Township as a condition triggering annexation of the designated property. The Amendment to Joint Resolution to Designate provides that real property designated for annexation that has not previously been annexed will be annexed to the City upon issuance of an order incorporating the Township.

On April 7, 2022, the Township filed Resolution No. 2022-2B entitled In the Matter of the Petition of Empire Township for Incorporation Pursuant to Minnesota Statutes § 414.02, requesting that this tribunal issue an order incorporating the Township, to include all property other than that designated for orderly annexation to the City.¹ On May 13, 2022, the Township filed a Resolution 2022-5A entitled In the Matter of the

¹ *In the Matter of the Petition for the Incorporation of Empire Township (MBAU Docket I-74)*, OAH 71-0330-38285, Resolution No. 2022-2B In the Matter of the Petition of Empire Township for Incorporation Pursuant to Minnesota Statutes § 414.02 (Feb. 22, 2022) (on file with the Minn. Office Admin. Hearings).

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Amended Petition of Empire Township for Incorporation Pursuant to Minnesota Statutes § 414.02 (Amended Petition).² The Amended Petition revised the legal description contained in the original petition. On August 31, 2022, the Administrative Law Judge issued her Findings of Fact, Conclusions of Law, and Order granting the Township's Amended Petition and providing for incorporation of the Township as the City of Empire.³

On August 1, 2022, the parties filed their Joint Resolution to Annex, now pending before the Administrative Law Judge. The Joint Resolution to Annex requests that an order annexing the remaining property designated in the Orderly Annexation Agreement be issued in the event that this tribunal issues an order for incorporation of any portion of the Township.

Pursuant to Minn. Stat. § 414.0325, subd. 1(g), if a joint resolution designates an area as in need of orderly annexation and states that no alteration of its stated boundaries is appropriate, the administrative law judge may review and comment, but may not alter the boundaries. Further, Minn. Stat. § 414.0325, subd. 1(h), provides that if a joint resolution "designates an area as in need of orderly annexation, provides for the conditions for its annexation, and states that no consideration" by the administrative law judge is necessary, the administrative law judge may review and comment, but shall order the annexation within 30 days. The Joint Resolution to Designate contains terms consistent with Minn. Stat. § 414.0325, subd. 1(g)-(h).

Based on the issuance of the order for incorporation of the Township, a condition precedent to annexation of the property designated under the parties' Orderly Annexation Agreement has been satisfied. The Administrative Law Judge also concludes that the parties have satisfied all statutory requirements in this matter. Therefore, the parties' request for annexation of the Property is approved.

J. P. D.

² *In the Matter of the Petition for the Incorporation of Empire Township (MBAU Docket I-74)*, OAH 71-0330-38285, Resolution No. 2022-5A In the Matter of the Amended Petition of Empire Township for Incorporation Pursuant to Minnesota Statutes § 414.02 (May 10, 2022) (on file with the Minn. Office Admin. Hearings).

³ *In the Matter of the Petition for the Incorporation of Empire Township (MBAU Docket I-74)*, OAH 71-0330-38285, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER (Aug. 31, 2022) (on file with the Minn. Office Admin. Hearings).