

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE OFFICE OF STRATEGIC AND LONG-RANGE PLANNING

In Re the Petition of the Residents of the  
Town of Forest Lake for Annexation of the  
Unincorporated Property to the City of  
Forest Lake, Minnesota (A-6091)

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER

In Re the Petition of I.S.D. No. 831 for  
Annexation of Unincorporated Adjoining  
Property to the City of Forest Lake  
(A-6083)

In Re the Petition of the Township of  
Forest Lake for Incorporation (I-66).

The above-entitled matter came on for hearing before Administrative Law Judge George A. Beck at 9:30 a.m. on Wednesday, December 8, 1999, at the VFW Hall in the City of Forest Lake, Minnesota. The hearing continued on seven subsequent days and ended on December 17, 1999. A public testimony session was held on the evening of December 14, 1999. The parties were allowed time to submit written memoranda based upon a written transcript of the hearing. The transcript was received by all parties on January 10, 2000. The final written memorandum was received on February 14, 2000 and the record closed on that date.

Jay T. Squires, Esq., of the firm of Ratwick, Roszak and Maloney, P.A., 300 Peavy Building, 730 2<sup>nd</sup> Avenue South, Minneapolis, MN 55402, appeared representing Petitioner Independent School District No. 831. Dale G. Swanson, Esq., 407 West Broadway, Forest Lake, Minnesota 55025, represented petitioning residents of the Town, aka One Great Forest Lake (OGFL). Kevin K. Shoeberg, Esq., 600 Woodbury Business Center, 1890 Wooddale Drive, Woodbury, Minnesota 55125, represented Petitioner Town of Forest Lake. David K. Hebert, Esq., of the firm of Hebert, Welch and Humphries, P.A., 20 North Lake Street, Suite 301, Forest Lake, Minnesota 55025, appeared representing the City of Forest Lake. H. Alan Kantrud, Esq., of the firm of Kolstad and Knaak, PLC, 3535 Vadnais Center Drive, Suite 130, St. Paul, Minnesota 55110, appeared representing resident Frederic W. Knaak.

NOTICE

This Order is the final administrative decision in this case under Minn. Stat. §§ 414.02, 414.031, 414.11, and the Order of the Commissioner of Administration dated September 29, 1999. Any person aggrieved by this Order may appeal to Washington

County District Court by filing an Application for Review with the Court Administrator within 30 days of the date of this Order. An appeal does not stay the effect of this Order.<sup>1</sup>

Any party may submit a written request for an amendment of these Findings of Fact, Conclusions of Law and Order within 7 days from the date of the mailing of the Order.<sup>2</sup> However, no request for amendment shall extend the time of appeal from these Findings of Fact, Conclusions of Law, and Order.

### STATEMENT OF ISSUE

The issue in this proceeding is whether or not the Petitions for Annexation and Incorporation should be granted or denied based upon the factors set out in statute.<sup>3</sup> The decision is set out on page 44.

Based upon all of the testimony, exhibits and the record in this proceeding, the Administrative Law Judge makes the following:

### FINDINGS OF FACT

#### **Procedural History of this Proceeding**

1. On April 7, 1999, Independent School District (ISD) No. 831 filed a petition with the Minnesota Municipal Board seeking annexation of approximately 133 acres of its property located in the Town of Forest Lake, to the City of Forest Lake. The area proposed for annexation is described as follows:

That part of the SE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 17, Township 32 North, Range 21 West, Washington County, Minnesota, described as follows: Beginning at the Southeast corner of Section 17; thence West along the South line of Section 17, a distance of 925 feet; thence North, deflecting 90 degrees to the right, a distance of 621 feet; thence West, deflecting 90 degrees to the left, a distance of 307.1 feet, more or less, to the easterly right-of-way line of Trunk Highway No. 61; thence northeasterly, along said easterly right of way line, a distance of 713.1 feet, more or less, to the North line of the SE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 17; thence easterly, along said North line, a distance of 1085 feet, more or less, to the northeast corner of the SE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 17; thence southerly, along the East line of Section 17, a distance of 1326.6 feet, more or less, to the point of beginning, containing 31.6 acres, more or less, and subject to the existing township roads along the East line and a portion of the South line. Including any right of title existing in the adjacent U.S. Highway No. 61 and Trunk Highway No. 97 to the center line thereof.

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<sup>1</sup> Minn. Stat. § 414.07, subd. 2.

<sup>2</sup> Minn. Rule pt. 6000.3100.

<sup>3</sup> Minn. Stat. §§ 414.02, 414.031.

AND

That part of the NE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 17, Township 32 North, Range 21 West, Washington County, Minnesota, lying southerly of the southerly right-of-way line of Trunk Highway No. 97 and easterly of the easterly right-of-way line of Trunk Highway 61, containing 22.96 acres, more or less, and subject to the existing township road along a portion of the east line thereof. Including any right of title existing in the adjacent U.S. Highway No. 61 and Trunk Highway No. 97 to the center line thereof.

AND

That part of the NW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 16, Township 32 North, Range 21 West, Washington County, Minnesota, described as follows: Commencing at the southwest corner of the NW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 16; thence North, along the west line of Section 16, a distance of 291.75 feet to the point of beginning, which point is also on the center line of an existing township road at the point of tangential curve to the right; thence northeasterly, along said curve having a radius of 538.38 feet, central angle of 40° 45' 30", an arc length of 382.98 feet to the point of tangency; thence northeasterly, tangent to said curve and continuing along said township road center line, a distance of 663.3 feet to the southerly right-of-way line of Trunk Highway No. 97; thence westerly, along said southerly highway right-of-way line, a distance of 575.2 feet to the west line of Section 16, thence south, along said west line, a distance of 739.45 feet to the point of beginning, containing 3.54 acres, more or less, and subject to a 33 foot easement for the township road along the easterly line thereof. Including any right of title existing in the adjacent Trunk Highway 97, to the center line thereof, subject to easement of record.

AND

That part of the South  $\frac{1}{2}$  of the Southeast  $\frac{1}{4}$  of Section 17, Township 32 North, Range 21 West, described as follows: commencing at the Southeast corner of Section 17, thence West along the South line of Section 17, a distance of 925 feet to the point of beginning; thence North at a right angle, 621 feet; thence West at a right angle 307.1 feet to the Easterly right-of-way line of Trunk Highway 61; thence Southwesterly along said Easterly right-of-way line, 632.55 feet, more or less, to the South line of said Section 17; thence East along said South line, 425.8 feet, more or less, to the point of beginning, and including any right of title existing in Trunk Highway 61 along the West line and 210<sup>th</sup> Street North along the South line.

AND

The North ½ of the Southwest ¼ of Section 16, in Township 32 North, of Range 21 West, except the West 295 feet of the East 328 feet of the North 295 feet of the Northeast ¼ of the Southwest ¼. Also except that part of the Northwest ¼ of the Southwest ¼ as follows, to wit: Commencing at the southwest corner, thence north along the west line of Section 16, 291.75 feet to the point of beginning, which is also on the center line of the existing Township Road at the point of tangential curve having a radius of 538.38 feet, a central angle of the 40° 45' 30", and an arc length of 382.98 feet to the point of tangency, thence northeasterly tangent to said curve and continuing along said Township Road center line a distance of 663.3 feet to the southerly right-of-way line of Trunk Highway 97, thence westerly along said southerly highway right-of-way a distance of 575.2 feet to the west line of section 16, thence south along said west line a distance of 739.45 feet to the point of beginning. Also except that part of the Northwest ¼ of the Southwest ¼ lying north of Trunk Highway 97. According to the United States Government survey thereof. Including any right of title existing in the adjacent Trunk Highway 97 subject to easement of record.<sup>4</sup>

2. The School District's land in question abuts the City for approximately one-half mile along the City's southern boundary, State Highway 97.<sup>5</sup>

3. On April 15, 1999, a resolution supporting the annexation petition of ISD No. 831 was filed with the Board by the City Council of the City of Forest Lake.<sup>6</sup>

4. The Minnesota Municipal Board set the School District petition on for hearing for May 17, 1999. Notice of the hearing was published in the Forest Lake Times. The hearing was opened on May 17, 1999 and immediately continued to June 28, 1999.

5. On April 28, 1999 another Petition of approximately 197 residents of the Town of Forest Lake was filed with the Minnesota Municipal Board seeking annexation of adjoining property to the City of Forest Lake.<sup>7</sup> The area proposed for annexation was described as follows:

Everything Within the Boundaries of the Town of Forest Lake

6. On the same date the Minnesota Municipal Board received a resolution of the City of Forest Lake supporting the Petition for Annexation filed by the residents.

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<sup>4</sup> Petition of ISD No. 831, State Planning File A-6083.

<sup>5</sup> Ex. 165, T. 809-810.

<sup>6</sup> Ex. 137.

<sup>7</sup> Pet., State Planning File A-6091. Petitions filed at the hearing indicate some 400-500 supporters of the Petition. Ex. 8a.

7. On May 6, 1999 the Minnesota Municipal Board received a Petition from the Township of Forest Lake for incorporation of the entire Township as a city.<sup>8</sup> The property proposed for incorporation in Petition (I-66) is described as follows:

The Township of Forest Lake<sup>9</sup>

This Petition was set on for hearing at 8:30 a.m. on June 28, 1999.

8. On May 7, 1999 the Minnesota Municipal Board set the resident's petition on for hearing at 9:00 a.m. on June 17, 1999, and directed that it be immediately continued and consolidated for hearing purposes with the incorporation petition filed by the Town of Forest Lake, at 8:30 a.m. on June 28, 1999.

9. On May 13, 1999 the Municipal Board voted to also consolidate the School District petition with the other two petitions for hearing on June 28, 1999. The Notice of Hearing on the residents' petition was duly published in the Forest Lake Times.

10. On May 20, 1999 the Municipal Board voted 2 to 1 to separate the School District petition (A-6083) from the other two petitions and to hear it separately.

11. The hearing on the incorporation petition was later rescheduled for July 6, 1999 at 10:30 a.m. due to an error in publication. The Notice of Hearing was duly published in the St. Paul Pioneer Press. The hearing was opened on July 6, 1999 and continued to an indefinite date.

12. The 1999 Minnesota Legislature enacted Minn. Stat. § 414.11 which terminated the Municipal Board as of June 1, 1999 and transferred all of its authority and duties to the Office of Strategic and Long-Range Planning.

13. On June 10, 1999, Director Dean Barkley of the Office of Strategic and Long-Range Planning directed the parties to meet to discuss possible resolution of these contested matters. The parties met four times during the summer of 1999 with the aid of a facilitator. At the final meeting on August 19, 1999, the parties were unable to reach a compromise.<sup>10</sup>

14. During September of 1999, the parties individually elected to have the petitions heard by an Administrative Law Judge through the Office of Administrative Hearings.

15. In an Order dated September 29, 1999, the Commissioner of Administration directed the Office of Administrative Hearings to assume the work of the

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<sup>8</sup> Pet., State Planning File I-66. Ex. 228.

<sup>9</sup> The Notice of Hearing described the area as: Sections 1 through 36, township 32 N, Range 21 W, Washington County, Minnesota, excluding the corporate boundary of the City of Forest Lake, Minnesota.

<sup>10</sup> Ex. 166.

Office of Strategic and Long-Range Planning in regard to these three petitions by conducting hearings and issuing a final order.

16. In addition to the three petitioners, other parties to this proceeding are the City of Forest Lake and Frederic W. Knaak, a resident of the southeast area of the Township.

17. Prehearing conferences were conducted by the Administrative Law Judge on October 7, 1999 and November 1, 1999. The three petitions were consolidated for hearing beginning December 8, 1999.

18. A Notice of Hearing in this matter was issued by the Office of Administrative Hearings on November 19, 1999 and duly published in the Forest Lake Times on November 25 and December 2, 1999.

19. On November 23, 1999 the Minnesota Court of Appeals denied a Petition for a Writ of Prohibition filed by Frederic W. Knaak that asserted that the Office of Administrative Hearings lacked subject matter jurisdiction in this case.

20. A final prehearing conference was conducted on December 6, 1999.

#### **Prior Incorporation/Annexation History**

21. On November 19, 1971, Forest Lake Township filed a Petition for Incorporation as a village with the Minnesota Municipal Board. The Board denied the petition and found that the existing form of township government was adequate to meet the needs of the Town residents.<sup>11</sup>

22. On August 31, 1990, the Town petitioned the Minnesota Municipal Board to become an incorporated city. After a hearing on January 31, 1991, the Board directed the Town and City to meet three times over the following six months to discuss possible options. The meetings were completed without any agreement and on November 13, 1991, the Municipal Board entered an Order Denying the Petition for Incorporation and encouraging the parties to work together towards a possible merger.<sup>12</sup> The Board found that incorporation of the Town would create two municipal entities within one freestanding growth area.

23. On November 21, 1991, the Board's Order was appealed to Washington County District Court where it was reversed.<sup>13</sup> The District Court's order was then appealed to the Minnesota Court of Appeals, which reversed the District Court and reinstated the order of the Minnesota Municipal Board.<sup>14</sup>

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<sup>11</sup> Ex. 135, p. 7.

<sup>12</sup> Ex. 153., T.776

<sup>13</sup> Ex. 135, p. 7.

<sup>14</sup> T. 776.

24. On December 19, 1991, a Petition was filed by landowners in the northwest corner of the Town for annexation of 840 acres to the City of Forest Lake. The Petition was granted by the Municipal Board in 1993.<sup>15</sup>

25. In 1992 the Town and the City jointly financed a community study by the Humphrey Institute at the University of Minnesota.<sup>16</sup> In December of 1992, the Humphrey Institute Planning Workshop issued a 160 page Community Analysis for the City and Town of Forest Lake. The purpose of the report was to provide a comparative database to aid the Town and the City in their efforts at future planning either as two separate communities or as a consolidated community.<sup>17</sup>

26. In 1993, residents in the Town petitioned the Municipal Board for annexation to the City and the Town petitioned for incorporation. The petitioners then agreed to withdraw the petitions and entered into a merger study process which was conducted over an 18-month period. The merger study committee and its subcommittees met from May of 1996 through February of 1997. Its final written report was issued in June of 1997.<sup>18</sup> The merger study committee recommended to the Town Board and the City Council that they develop a consolidation plan as well as a process for a referendum.<sup>19</sup> The two governing bodies were unable to agree on how to proceed, however.<sup>20</sup>

27. After the City Council and the Town Board failed to agree on a plan, the Town Board filed with the Municipal Board for incorporation and Township residents then filed for annexation. The City supported the petition of the Township residents.<sup>21</sup> At the Municipal Board hearing in April of 1998, the parties agreed to enter into a process with the Board of Government Innovation and Cooperation (BGIC), leading to a merger referendum. The Municipal Board petitions were then dismissed.<sup>22</sup>

28. The City and the Town hired a neutral facilitator and met monthly for several months to study the possibility of a merger.<sup>23</sup> On March 22, 1999 the Forest Lake City Council passed a resolution withdrawing from participation in the study of a possible combination of the City and the Town. The resolution cited examples of what the City Council believed were indications that the Town Board had no real intention of cooperating on a plan of combination.<sup>24</sup>

29. Two seats on the Town Board were on the ballot in November 1998 for terms beginning in January of 1999. After participating in the failed 1997 merger study and the 1998 discussions, Michael Aschenbrenner decided to run for one of the seats

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<sup>15</sup> Ex. 135, p. 8., T. 777.

<sup>16</sup> T. 778

<sup>17</sup> Ex. 135, p. 5.

<sup>18</sup> Ex. 136.

<sup>19</sup> Ex. 136, p. 11.

<sup>20</sup> T. 781, 1111-12

<sup>21</sup> Ex. 138

<sup>22</sup> T. 782, 1112

<sup>23</sup> T. 783

<sup>24</sup> Ex. 200.

against a long-term incumbent. Mr. Aschenbrenner, who resides east of the third Forest Lake, won the election. His two primary issues were supporting a merger of the City and Town and adding parks and trails to the town. Mr. Aschenbrenner's opponent did not support a merger.<sup>25</sup> In the 1998 election, 3,579 city residents voted and 4,644 township residents voted.<sup>26</sup> Two successful candidates in the most recent school board election were members of OGFL.<sup>27</sup>

## Physical Features

30. The City and Town are located in northwestern Washington County. The City is enclosed substantially by the Town on three sides. The Town abuts the City on the south and east sides of the City. The Town abuts the City on the City's north side except for that part of the City lying west of Interstate 35, which is bounded by the south line of Chisago County. The west sides of the City and Town are bounded by Anoka County. The south side of the Town abuts the City of Hugo; the east side abuts New Scandia Township and the north side is bounded by Chisago County.<sup>28</sup>

31. The Town and City have a well developed network of arterial, collector and local roads serving travel to and through the community. Major roads include U.S. Highways 8 and 61, TH 97, CSAH 2, also known as North Shore Trail and County Road 50. Interstate 35 provides important connections to the metropolitan area to the south via Interstates 35W and 35E, as well as to other parts of the State. There are approximately 80 miles of state, county and town roads in the Town. Approximately 32 miles of Town roads are paved and 41 miles of Town roads are gravel.<sup>29</sup>

32. The area in the Town is approximately 19,970 acres (32 square miles).<sup>30</sup> The Town's topography consists of glacial moraines or knolls forming a gently rolling topography containing a wide variety of soil types.<sup>31</sup> The soils are variable as a result of glaciation. The soils are a heterogeneous mixture of parent materials scoured and carried in from Canada and northern Minnesota. The soils were further mixed and re-stratified by moraine building and water melting. The vast majority of soils in the Town have severe limitations for the installation of individual sewage treatment systems.<sup>32</sup> The Town has 2919 acres of lakes and streams and 4575 acres of wetlands. The Town encompasses parts of Forest, Mud and Sylvan Lakes and all of Clear, Cranberry, Elwell, Shields and Twin Lakes.<sup>33</sup>

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<sup>25</sup> T. 546-548, 573.

<sup>26</sup> T. 584.

<sup>27</sup> T. 575.

<sup>28</sup> Ex. 134b, p. 1.

<sup>29</sup> T. 1175, 1810.

<sup>30</sup> Ex. 163, T. 1166.

<sup>31</sup> Ex 266.

<sup>32</sup> Ex. 266, p. 44.

<sup>33</sup> Ex. 134b.



33. The area in the City is 2658 acres. The City has relatively level terrain with 41 acres of ponds and lakes, including part of Higgins Lake, and approximately 408 acres of wetlands.<sup>34</sup> The largest physical feature in common to the Town and City is the lake of Forest Lake, containing approximately 2250 acres,<sup>35</sup> bounded approximately 75% by the Town and 25% by the City.

34. The southwest corner of the City and the westerly and southerly portions of the Town lie within the Rice Creek Watershed District. The remainder of the City and Town are within the Comfort Lake-Forest Lake Watershed District.<sup>36</sup>

## Population

35. The populations of both the City and Town have grown significantly over the past twenty years. The City had a population of 4596 in 1980, 5833 in 1990, 6808 in 1998 and in 2000 it is expected to have a population of 7000. The present Town had a population of 5331 in 1980, 6690 in 1990, 7880 in 1998 and will have approximately 8050 in 2000.<sup>37</sup>

36. In 1995, the City of Forest Lake had 2664 households. It is projected to have 2800 households in the year 2000 and 3200 households by the year 2010. In 1996, the Town had 2435 households. It is projected to have 2700 households in the year 2000 and 3800 households by the year 2010.<sup>38</sup>

37. By 2020 projection shows that the City will have 8600 residents in 3500 households and that the Town will have 13,330 residents in 5200 households. This means that the two communities will need to plan for 7800 additional people and 3600 additional households between 1995 and 2020.<sup>39</sup>

## Land Use

38. Of its 19,970 acres, the Town presently has 1083 acres of rural residential property, 1429 acres of urban residential property, 11 acres of multiple family use, 215 acres of commercial industrial use, 758 acres of public, institutional property and 12,584 acres of agricultural-vacant property. It has land for parks and recreational use of 193 acres, conservancy acres of 778 acres and lakes of 2919 acres.<sup>40</sup>

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<sup>34</sup> Ex. 106, p. 11.

<sup>35</sup> Ex. 266, p. 7.

<sup>36</sup> T. 660.

<sup>37</sup> Ex 163, T. 1166.

<sup>38</sup> Ex. 134b, T.159.

<sup>39</sup> Ex. 134b, p. 2.

<sup>40</sup> Ex. 263, p. 18.

39. The Town's commercial, industrial uses are located near the intersection of Minnesota Trunk Highway 97 and U. S. Highway 61. An area of rural commercial-industrial uses is located north of U. S. Highway 8 on the northerly edge of the Town.<sup>41</sup>

40. The heaviest concentration of urban residential property in the Town is adjacent to or near to the shores of Forest Lake and Clear Lake in areas served by public sewer. A 98-unit single family residential plat known as the Southview development is located south of Highway 97 between Goodview Avenue and Highway 61. Rural residential sites are scattered throughout the Town. Although substantial acreage is zoned for agricultural use, there are only 4 or 5 commercial farms remaining in the Town.<sup>42</sup>

41. The 840 acres annexed by the City in 1993 included rural land uses such as active farming, hunting and maintenance of horses and other farm animals. The City has not interfered with or limited those preexisting uses after annexation.<sup>43</sup>

42. In 1998 the Town acquired a private airport of 290 acres lying west of Highway 61 and south of Highway 97. The Township acquired the airport for approximately \$1.8 million. The airport serves the Township and the surrounding community.<sup>44</sup> The Township developed an airport layout plan and received assistance for the acquisition and layout plan from the Minnesota Department of Transportation.<sup>45</sup> The site has a landing strip and a number of hangars.

43. The Township has plans to develop a commercial industrial park adjacent to the airport but is not able to create an Economic Development Authority or utilize Tax Increment Financing for these projects as a township. As a City, the Township would be permitted to utilize these development tools.<sup>46</sup>

44. Forest Lake Senior High School and a new junior high school presently under construction, as well as the District's administrative facilities, are located in the Town adjacent to the Highway 97 City-Town boundary at the intersection of Highway 97 and Goodview Avenue.

45. Of its 2658 acres, the City has 329 acres of developed commercial, industrial property, 782 acres of single family residential property and 80 acres of multiple family housing. A mobile home park occupies 23 acres. Parks, open space and recreation areas comprise 134 acres and public and semi-public uses occupy 186 acres.<sup>47</sup> Within the present MUSA the City has only three or four sites available for

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<sup>41</sup> Ex. 266, p. 5.

<sup>42</sup> T. 1461.

<sup>43</sup> T. 590, 793, 805, 1038, 1094.

<sup>44</sup> Ex. 209, 210.

<sup>45</sup> T. 1326, Ex. 227.

<sup>46</sup> T. 1911.

<sup>47</sup> Ex. 106, p. 11.

development: single family residential-16 acres; multi-family residential-16 acres; commercial-25 acres; and industrial-15 acres.<sup>48</sup>

46. Lake Street (Highway 61), Broadway Avenue and areas adjacent to the east and west sides of Interstate Highway 35 make up the commercial industrial areas of the City. Restaurants, motels, Kmart, Walmart, Target, Menards, auto dealerships and light manufacturing facilities are located in the vicinity of the Broadway Avenue and Interstate Highway 35 intersection within the City. The City has a large complement of multi-family and low and moderate income housing, more than meeting the Livable Communities Act requirements for housing for various age groups, family sizes and income status.<sup>49</sup> Projections indicate that approximately 1100 acres of buildable land will be needed in the City and Town through 2020 to accommodate anticipated growth.<sup>50</sup>

## Planning

47. Both the City and Town are within the metropolitan area and as such are governed by the *Regional Blueprint*, a comprehensive guide plan adopted by the Metropolitan Council. The Regional Blueprint contains a Regional Growth Strategy which identifies all of the City and a portion of adjacent areas of the Town as part of the existing metropolitan "urban area." The remainder of the Town is designated as "urban reserve," except for small areas in the northeast and southeast corners of the Town which are designated as "permanent rural."<sup>51</sup>

48. "Urban area" is defined as that portion of the metropolitan region served with regional sewer and urban-level transportation services. An urban area is expected to develop at urban and suburban residential densities averaging three dwelling units per acre or greater and with corresponding commercial, industrial and public uses consistent with locally approved comprehensive plans. "Urban reserve" is an area identified by the Metropolitan Council as land in a region needed for possible urbanization to accommodate regional growth forecasts through the year 2040.<sup>52</sup>

49. Growth and development in the metropolitan area are controlled by the orderly expansion of the Metropolitan Urban Service Area (MUSA) boundaries. The Metropolitan Council encourages expansions of the boundaries to areas contiguous to existing urban areas in a manner consistent with local comprehensive plans. All of the City is within the MUSA except for a small portion on its west side and in its northwest corner. The area within the MUSA in the Town is located primarily adjacent to the lake

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<sup>48</sup> Ex. 106, pp. 16-17.

<sup>49</sup> T. 1031.

<sup>50</sup> Ex. 134b, p. 2.

<sup>51</sup> Ex. 3, Ex. 134b.

<sup>52</sup> Ex. 134b.

of Forest Lake and Clear Lake, and between Highway 61 and Goodview Avenue and adjacent to the south boundary of the City.<sup>53</sup>

50. Both the Town and the City have adopted comprehensive plans. The Town has recently updated its comprehensive plan with Metropolitan Council review completed on June 25, 1999. As a part of the plan, the Town updated its water, sewer, and transportation plans.<sup>54</sup> The City has updated its comprehensive plan and is awaiting final review by the Metropolitan Council. At the direction of Metropolitan Council staff, the Town Comprehensive Plan was prepared in a manner so as not to preclude a joint plan with the City at a later time.<sup>55</sup> The Town is in the process of amending its Comprehensive Plan by changing a designated commercial industrial area north of 202<sup>nd</sup> Street and west of Fenway Avenue to a designated residential zone to accommodate a developer's request to construct 450 units of residential housing.<sup>56</sup>

51. Both the City and the Town have adopted zoning, subdivision and shoreland management regulations. Town zoning and subdivision regulations and projects are subject to review and approval by Washington County. The Town cannot be less restrictive than the County.<sup>57</sup> The City's zoning decisions are final. Participants on the Land Use committee of the 1997 merger study agreed without dissent that both zoning ordinances could continue to be applied in their respective prior geographic areas.<sup>58</sup> The City has a comprehensive storm water management ordinance. The Town plans to develop one.<sup>59</sup>

### **The School District**

52. Independent School District No. 831 currently operates seven elementary schools, two junior high schools and one senior high school. In addition, the School District operates its District administrative facility, plus two leased facilities. The leased facilities, located in the City, house the District's Community Services Program and an alternative school for at-risk children in grades 6-12.<sup>60</sup>

53. Approximately 7,700 students are enrolled in the School District.<sup>61</sup> Student population growth within the District has created a need for the construction of new school buildings.<sup>62</sup>

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<sup>53</sup> Ex. 266, Figure 3.

<sup>54</sup> T. 1720.

<sup>55</sup> T. 1582.

<sup>56</sup> T. 1504, 1790, 1791.

<sup>57</sup> T. 1365, 1718, 1785-1789, 1812.

<sup>58</sup> T. 1090, 1099.

<sup>59</sup> T. 1299.

<sup>60</sup> T. 34.

<sup>61</sup> T. 34.

<sup>62</sup> T. 37.

54. The School District's only senior high school, Forest Lake Senior High School, is located on a portion of the land that the School District seeks to have annexed to the City.<sup>63</sup>

55. The School District's administrative offices are located on a portion of the land that the School District seeks to have annexed to the City.<sup>64</sup>

56. Historically, the construction of new schools within the School District has been funded through a bond referendum process. If a bond issue is passed by the citizens within the School District, the School District sells the bonds, uses the money to build the new facility, and then repays the bond over the course of the following twenty years.<sup>65</sup>

57. In 1995, the School District proposed a bond issue to build a third junior high school in the Wyoming area, plus an ice arena and a swimming pool. The bond issue failed by approximately 1,000 votes.<sup>66</sup>

58. In 1996, the School District proposed another bond issue to replace a junior high school and to seek technology funding. The technology portion of the bond issue passed and the junior high school portion failed.<sup>67</sup>

59. In 1998, the School District proposed a \$40 million bonding referendum to: (a) Replace Central Junior High School with a new facility to be built on District property adjacent to the City; (b) Convert the Central building for usage for a number of programs and activities now located in leased buildings or in other, over-crowded District buildings; (c) Remodel Southwest Junior High School, adding a four-classroom module; (d) Make improvements and additions at elementary schools to replace leased portable classrooms, expand core areas and/or upgrade building components (windows, septic system, sidewalks, etc.); and (e) Provide more classrooms, a multi-purpose gym and remodel portions of the existing senior high school.<sup>68</sup> The referendum passed in May of 1998 by a margin of approximately 2,000 votes.<sup>69</sup>

60. The new junior high school facility is being constructed on the portion of land, adjacent to the City, that the School District seeks to have annexed to the City.

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<sup>63</sup> Ex. 52, T. 35.

<sup>64</sup> Ex. 52, T. 35.

<sup>65</sup> T. 37.

<sup>66</sup> T. 37-38.

<sup>67</sup> T. 38.

<sup>68</sup> Ex. 106, Section V (D)(4), p. 8.

<sup>69</sup> Ex. 106, Section V (D)(4), p. 8, T. 38.

The building complex sits on the corner lot east of Goodview Avenue North and south of TH 97. The facility is scheduled to be completed in mid-June of 2000 and to open in the fall of 2000.<sup>70</sup> The school will serve approximately 1,100 students, ages 12 through 15, in grades 7 through 9. The building will remain open in the evenings for community programs.<sup>71</sup>

61. The District land in question contains no residences and has a current residential population of zero.<sup>72</sup>

62. The District land is zoned under current Township land use regulations to permit school uses.<sup>73</sup> If annexed to the City, the District land in question would be zoned to permit continued school use.<sup>74</sup>

63. The School District is required to submit building plans for each new facility to the State Department of Children, Families and Learning for review and approval. The School District's plans for its new junior high school facility were drawn up by the architectural firm, KKE, and anticipated the use of City water as its sole source of water. The School District's plans were submitted to the State and received approval.<sup>75</sup>

64. At the time the School District submitted its plans for the new school building to the State, the Town did not own a municipal water well.<sup>76</sup>

65. In the fall of 1998, Mr. Richard Tschida, a member of the Town Board, appeared at a School Board meeting and informed School Board members that the Township was planning to implement its own municipal water system. School Superintendent Donald Ruble had no prior knowledge of the Township's plans.<sup>77</sup>

66. Shortly thereafter, Dr. Ruble contacted Mr. Joe Hallberg, President of Hallberg Engineering, the engineering firm retained by KKE to design the new school's plumbing system, and asked him to conduct a comparison study of the Township water

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<sup>70</sup> T. 40.

<sup>71</sup> T. 38, 40.

<sup>72</sup> Ex. 165.

<sup>73</sup> Ex. 266.

<sup>74</sup> Ex. 102.

<sup>75</sup> T. 42.

<sup>76</sup> T. 42.

<sup>77</sup> T. 43.

and the City water. Dr. Ruble's concern was that whatever the source of the water for the new junior high school facility, it should be of the same quality as the City's water.<sup>78</sup>

67. Mr. Hallberg prepared a comparative summary and presented his findings to the School Board.<sup>79</sup> Based upon the data he collected, Mr. Hallberg determined that the Town's water was of a lesser quality than the City's water.<sup>80</sup>

68. In January of 1999, the School District received a letter from Rick Ashbach, then the Town's Board Chair, expressing the Town's continued desire to provide water service to the junior high school.<sup>81</sup>

69. In January and February of 1999, when the market bidding phase for construction was underway, the Township did not have an operational water system that could meet the needs of the new junior high school, as the Township's water tower had not yet been built.<sup>82</sup>

70. In early 1999, the School District and the Town held several meetings about the water quality issue. At the same time, the School District, through its architects, Kraus-Anderson and KKE, proceeded to apply for zoning and land use permits for construction of the new junior high school.<sup>83</sup>

71. The School District's request for a conditional use permit came before the Town Board at its February 8, 1999, Board meeting. The water quality issue was also discussed. Dr. Ruble informed the Board of the School District's position that the Town's water should not cost more than the City's water and should be of the same quality. Dr. Ruble also informed the Board that any delay in the grant of the conditional use permit (CUP) by the Town would delay the commencement of construction and cost the taxpayers money.<sup>84</sup> Dr. Ruble also expressed concern about potential delays that might result in obtaining approval from Washington County for the building project.<sup>85</sup>

72. A motion was made by Town Board Member Mike Aschenbrener to approve the CUP contingent upon removal of the water issue from a list of CUP conditions that had been prepared earlier by the Town staff.<sup>86</sup> Town Board member,

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<sup>78</sup> T. 43.

<sup>79</sup> Ex. 53.

<sup>80</sup> Ex. 53.

<sup>81</sup> T. 44-45.

<sup>82</sup> T. 477-478.

<sup>83</sup> T. 45.

<sup>84</sup> Ex. 69, T. 47.

<sup>85</sup> Ex. 69, T. 45-47.

<sup>86</sup> Ex. 69, T. 47.

Richard Tschida, stated that the School District might be forced to use the Town's water if a local water ordinance passed. The Town's Board Chair, Richard Ashbach, commented that he expected the School District to work in good faith with the Town to provide water to the School District's new school building. The motion to approve the CUP, contingent upon removal of the water issue from a list of CUP conditions, carried.

73. At some point between the February 8, 1999, Town Board meeting and March 22, 1999, the Township passed a water ordinance. The water ordinance requires an entity to use Township water if the Township can provide it. The ordinance contains no language addressing retroactive application.<sup>87</sup>

74. Counsel for the Town of Forest Lake sent a letter to the School District, dated March 22, 1999. He stated: "The CUP requires that the School District comply with all of the Township ordinances including the Water Ordinance and therefore before the building permit and CUP can be issued we will need to have the issue regarding the water service resolved between the School District and the Township."<sup>88</sup>

75. Shortly thereafter, a School Board meeting was held to discuss the water issue. The Board members concluded that the new school building project needed to keep moving forward. In an attempt to prevent the project from further delays, they voted to commence litigation to compel the Township to issue the CUP and building permits. The Board also voted to pursue annexation of the School District's property adjacent to the City into the City.<sup>89</sup>

76. The School District's legal action against the Township was commenced in April of 1999. At that time, the School District had not yet formally applied to the Township for a building permit for the construction of the new junior high school.<sup>90</sup>

77. On or about May 5, 1999, the School District applied to the Township for the building permit for the construction of the new junior high school.<sup>91</sup>

78. In May of 1999, the legal action proceeded to Washington County District Court. The matter settled that same month. The Town stipulated that it would issue the CUP and the building permit. The Town assisted the School District in meeting the

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<sup>87</sup> Ex. 73.

<sup>88</sup> Ex. 73.

<sup>89</sup> T. 51-52.

<sup>90</sup> T. 65.

<sup>91</sup> T. 66-68.



County's application deadlines. The permits were issued shortly after the settlement of lawsuit.<sup>92</sup>

## **Water and Sewer - Town**

79. The Township's existing water system has its source in a single well, the Southview well that was drilled in 1993-94. The Township purchased the Southview well from the developer of the Southview residential development in early 1999.<sup>93</sup> The Southview well is a screened, glacial drift well, 18 inches in diameter, with a capacity of approximately 500 gallons per minute.<sup>94</sup>

80. The Township's well is shallower than the City's aquifer well. Because it is shallower, the recharge rate, the time it takes water to percolate, is quicker in the Township's well than in the City's system. Water in a shallower well is younger and therefore at higher risk for pollutants whereas, in a deeper, aquifer well with a slower recharge rate, there is more time for pollutants to be treated with chemicals or by other methods and broken down.<sup>95</sup>

81. The Township's water system currently operates with the Southview well, plus a well pump that discharges water into existing piping in a pump house. An elevated storage tank will soon connect to the pump house on the discharge side. A 12-inch trunk water main line runs from the Southview well.<sup>96</sup>

82. The Township's dead-end water main has a temporary hook-up to the School District's new junior high school facility for construction purposes only. Other than this, the Southview well presently serves only the Southview development.

83. Two housing developments have been proposed in the Township which will add approximately 250-750 units to the water system. One of those projects already has preliminary plat approval. The Township's financial advisor informed the Township that as of January 25, 1999, it could collect an area charge of approximately \$200,000 on the 80-acre parcel of land immediately south of the junior high school site, that is proposed for development by Rick Murray.<sup>97</sup>

84. The Township recently completed construction of a 500,000-gallon elevated water storage tank.<sup>98</sup> The tower needs only to be painted to become fully operational. The Township expects to have the tank ready for operation by June 28, 2000.<sup>99</sup>

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<sup>92</sup> T. 52-53.

<sup>93</sup> Ex. 206, T. 1350.

<sup>94</sup> Ex. 206, p. 1.

<sup>95</sup> Ex. 54, T. 351-352.

<sup>96</sup> Ex. 54.

<sup>97</sup> Ex. 75, T. 1430-1431.

<sup>98</sup> Ex. 54, p. 5.

<sup>99</sup> Ex. 78.

85. Depending on the volume level the tank is operating at, water may sit in the well for days, weeks, or longer. When water sits in storage for a considerable time, it can deteriorate before it reaches consumers.<sup>100</sup>

86. Basic firefighting requirements regarding the storage of water in a ready position to supply to a school facility mandate that the system must be able to supply 2,000 gallons per minute for a two-hour period of time. In order to meet this requirement, the Township would need to maintain a volume of 300,000 gallons of water in its water tower, in addition to meeting its needs for average daily consumption. Applying a theoretical equation, where volume/average daily consumption = the turnover rate (the rate at which water is replaced entirely), the Township's turnover rate would be approximately every 7.5 days.<sup>101</sup>

87. The Federal Environmental Protection Agency (EPA), under the Clean Water Drinking Act, has established secondary drinking water standards that address aesthetic water concerns. Those standards recommend a maximum level of .05 mg/L for the element manganese.<sup>102</sup>

88. The EPA has identified manganese as an element in drinking water warranting possible consideration for establishment of a primary water standard. Manganese is listed in the EPA's Contaminant Candidate List.<sup>103</sup>

89. The Township's water has been verified by its consultant, Bonestroo, Rosene, Anderlik & Associates, to contain .654 mg/l of manganese, exceeding the federal EPA aesthetic secondary standard by 13 times.<sup>104</sup>

90. Manganese is present in both the City of Forest Lake and Township water systems and is natural to this area.<sup>105</sup>

91. The Township's present water system does not include a treatment plant. Instead, the Township is relying upon a polyphosphate-sequestering agent to sequester manganese.<sup>106</sup>

92. The Township began sequestering manganese in mid-June of 1999 by adding polyphosphates to the Township's water emanating from the Southview well.<sup>107</sup>

93. Sequestration of manganese in this manner will only be partially functional at controlling manganese levels in the Township water system. Any manganese that

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<sup>100</sup> T. 353-354.

<sup>101</sup> Ex. 54, T. 355-356.

<sup>102</sup> Ex. 55.

<sup>103</sup> Ex. 60.

<sup>104</sup> Ex. 54, p. 3, Ex. 206, p. D-5.

<sup>105</sup> T. 60, T. 428.

<sup>106</sup> Ex. 54.

<sup>107</sup> Ex. 77.

remains sequestered after passing through the school's filter could become unsequestered after entering the school's interior piping and, if so, this would lead to staining and/or other plumbing or heating problems.<sup>108</sup>

94. In addition, because a considerable amount of water will sit in the Town's tank for a substantial period of time, the quality of the water may deteriorate before reaching consumers, even if the maximum benefit can be obtained from the addition of polyphosphates to the water. The benefit of the addition of polyphosphates will likely diminish the longer the water sits in the tank.<sup>109</sup>

95. The Township's use of polyphosphates necessitates the addition of chlorine to the water.<sup>110</sup> Chlorine is a strong oxidant that reacts with and oxidizes manganese immediately upon contact, changing the manganese from a dissolved ionic material into a particulate.<sup>111</sup>

96. The Minnesota Water Works Operations Manual recommends against the use of polyphosphates to sequester manganese in situations where the manganese level exceeds .05 ppm (the equivalent of .05 mg/L).<sup>112</sup> The Water Works Manual also suggests that, regardless of its initial effectiveness, the sequestration process may begin to break down if water is detained in the water system for more than 72 hours after sequestration occurs.<sup>113</sup>

97. In a memorandum to the Township dated January 28, 1999, Mark Wallis of Bonestroo, the Township's water consultant, informed the Township that its chemical feed equipment can be used to try to sequester the manganese, but that it might not be effective. Mr. Wallis stated that the Township "... really can't promise that manganese staining won't be a problem."<sup>114</sup> This was Mr. Wallis' best engineering judgment.<sup>115</sup>

98. The Township water meets all primary federal drinking water standards and all state Minnesota Department of Health standards.<sup>116</sup>

99. Mr. Wallis characterizes the Township's water system as typical of a start-up system.<sup>117</sup> He acknowledges that it is in the best interest of a water consumer to utilize a mature system.<sup>118</sup>

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<sup>108</sup> T. 502, 503.

<sup>109</sup> T. 356.

<sup>110</sup> T. 451.

<sup>111</sup> T. 451, 452.

<sup>112</sup> Ex. 56, p. 215.

<sup>113</sup> Ex. 56, p. 215.

<sup>114</sup> Ex. 54.

<sup>115</sup> T. 1676.

<sup>116</sup> T. 427, 429.

<sup>117</sup> T. 1644-1645.

<sup>118</sup> T. 1677.

100. Except for the limited areas served by the new water system, water is provided to Township residential and commercial entities by means of private, on-site wells.

101. The water pressure available from the Township ranges from 68 to 86 psi while the City of Forest Lake's water system produces 44 to 60 psi.<sup>119</sup> A City water main near the junior high school tested at 49 psi.<sup>120</sup>

102. In 1999, the Town issued bonds in the sum of \$1,755,000 to finance the expansion of its water system. Revenues to pay the bond debt are to be derived from future development. Sixty units of growth are required in the year 2000 and 78 units of growth are required in each year thereafter.<sup>121</sup> The Township Board voluntarily waived an area charge in the approximate amount of \$137,500 that could have been assessed against the School District property and applied toward the repayment of the bond issue.<sup>122</sup> In 1999 the Town also adopted a Water Supply Plan to meet the demands of projected growth to the year 2020 with estimated expenditures of \$10,000,000.<sup>123</sup>

103. The Town has municipal trunk sewer primarily serving the populated areas adjacent and near to the lake of Forest Lake and Clear Lake. Outflow from the system is to the Metropolitan Council Forest Lake Interceptor and ultimately to the Metropolitan Waste Water Treatment Plant in St. Paul. The majority of the Town area is served by on-site septic systems.<sup>124</sup>

104. The Town has entered into an agreement with Columbus Township to extend a sewer line to Columbus Township to provide it with access to the Forest Lake interceptor.<sup>125</sup>

### **Water and Sewer – City**

105. The entire City is served with public sewer and water except for a small area on the westerly edge of the City annexed to the City from the Town in 1994. The City updated its water supply plan in 1995.<sup>126</sup> It prepared a water systems update in 1999<sup>127</sup> that covers the City's water needs for the build-out of the current City and provides for the upgrade of the water system over the next 20 years.

106. The City's entire water supply emanates from one source, the Mt. Simon Hinckley formation, a well protected rock aquifer with a depth within the City of 560-630 feet (and up to 1,000 feet deep in other locations). This is the deepest of the three

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<sup>119</sup> T. 1652, T. 952.

<sup>120</sup> T. 952.

<sup>121</sup> Ex. 72.

<sup>122</sup> T. 1425, 1426

<sup>123</sup> Ex. 206.

<sup>124</sup> Ex. 134b.

<sup>125</sup> T. 1337.

<sup>126</sup> Ex. 128.

<sup>127</sup> Ex. 131.

primary aquifers that serve the Twin Cities metropolitan area, and the only aquifer available to the City of Forest Lake.<sup>128</sup>

107. The City's water utility system presently consists of two wells and two water treatment plants; a third well has been abandoned. The two existing wells, nos. 3 and 4, will soon be supplemented by a new well, no. 5, which is being built to replace the abandoned well.<sup>129</sup> When well no. 5 becomes operational, the City's three wells will have a combined capacity of approximately 3,100 gallons per minute.<sup>130</sup>

108. The City's water main system is a mature, looped system, meaning that it can circulate and feed water in more than one direction. This sometimes allows the City to maintain an uninterrupted flow of water to consumers in the event of water main breaks or facility failures.<sup>131</sup>

109. The City treats and softens its water. The City's water is treated in water treatment plants to remove minerals and hardness through ion exchange softeners.<sup>132</sup> The older water treatment plant and elevated storage tank of 100,000 gallons is located at the City Hall site. A new water treatment plant has been constructed at the intersection of Highway 97 and 8<sup>th</sup> Street, with a well having a capacity of approximately 1,200 gallons per minute. The new plant has a clear well reservoir with storage capacity of 350,000 gallons.

110. The City has a well and elevated storage tank with a capacity of 500,000 gallons located at the public works site on SW 4<sup>th</sup> Street in the City. The City has undertaken the construction of a new water treatment facility. Upon completion of that project the City will have two treatment plants with a capacity of 2,400 gallons per minute and in excess of 1,000,000 gallons of storage capacity.<sup>133</sup>

111. The City is considering elevating its present water tower by 35 feet to improve the control of wells and pumps, and to provide storage to meet peak demands and a reserve for fire suppression.<sup>134</sup>

112. The City's water system has a back-up system that runs using a generator. A second back-up generator will be added upon completion of the new well no. 4.<sup>135</sup> The back-up generator is designed to operate the water system indefinitely during a power outage.<sup>136</sup>

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<sup>128</sup> T. 369.

<sup>129</sup> T. 362.

<sup>130</sup> T. 330.

<sup>131</sup> T. 330, 331.

<sup>132</sup> T. 331, 332.

<sup>133</sup> T. 328-330.

<sup>134</sup> T. 362.

<sup>135</sup> T. 374.

<sup>136</sup> T. 374.

113. The City's water system is a balanced system, in that it is able to meet all anticipated demands while maintaining the reliability of a mature system.<sup>137</sup>

114. Before being treated, the manganese level in the City's water exceeds the .05 EPA secondary standard.<sup>138</sup> The City does not remove manganese from its water; however, the water softening process addresses the elevated manganese levels. After the City's water is treated, the manganese levels comply with the EPA secondary standard.<sup>139</sup>

115. The City's treated water meets all federal primary drinking water standards, relating to health, all federal secondary drinking water standards, relating to aesthetics, and all pertinent State standards for water quality.<sup>140</sup>

116. Since approximately 1972, when the Senior High School was built, the School District's administrative facility and the Senior High School have been served with water from the City's water supply.<sup>141</sup> These two facilities are now being served by the City's new treatment plant no. 2 and well no. 4, which are located just across the Highway 97 boundary at 8<sup>th</sup> Street.<sup>142</sup> Neither School District facility has experienced any visible staining or damage to its building component systems or plumbing fixtures from the City's water supply.<sup>143</sup>

117. The City water system is situated immediately adjacent to the boundaries between the Town and the City in three areas: the vicinity of the senior high school and new junior high school, along the north shore of Clear Lake and in the northeast corner of the City on the north side of Forest Lake.<sup>144</sup> The City has the present capacity and ability to provide fully treated and softened water to Forest Lake Senior High School, as it now does, as well as to the new junior high school, the Southview development in the Town and a proposed new 250 unit residential housing development within the Town.<sup>145</sup> Connecting the new junior high school to the City water system would cause the loss of a connection fee of \$47,000 to the town as well as the loss of future user fees. The Town has agreed to reimburse the connection fee to the school district if the school property is annexed to the City.<sup>146</sup>

### **School District Water Concerns**

118. Hallberg Engineering, a consulting engineering firm specializing in the areas of mechanical and electrical engineering, was retained by the KKE architectural

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<sup>137</sup> T. 363.

<sup>138</sup> T. 427.

<sup>139</sup> T. 447.

<sup>140</sup> T. 332, 333, 447.

<sup>141</sup> T. 41.

<sup>142</sup> Ex. 52, T. 41, 329.

<sup>143</sup> T. 42.

<sup>144</sup> T. 361.

<sup>145</sup> T. 371, 372.

<sup>146</sup> T. 1419, 1426.

firm in approximately the fall of 1998 to design the plumbing infrastructure of the School District's new junior high school. Joe Hallberg, is President and principal owner of Hallberg Engineering.<sup>147</sup>

119. In his experience, Mr. Hallberg has observed that highly elevated manganese levels in water can stain interior plumbing fixtures and exterior building surfaces and sidewalks.<sup>148</sup> Elevated manganese levels can also damage hot water systems, including the interiors of piping, the orifices of control valves, the surfaces of the heating system itself, and kitchen and laundry equipment, including dishwashers and washing machines, possibly reducing the life of the equipment and/or causing malfunctions.<sup>149</sup>

120. In October of 1999, Mr. Hallberg conducted an unscientific test to determine if any particulates in the Township's water would settle out and stain plumbing fixtures. The test consisted of installation of a sink in the basement of a residential property in the Township's Southview development. The sink was then exposed to Township water continuously for a period of three consecutive weeks, during which time it became discolored.<sup>150</sup> Mr. Hallberg has interpreted this test result to reinforce his belief that the addition of polyphosphates to the Township's water is an unsuccessful mechanism for completely sequestering manganese.<sup>151</sup>

121. The Township has ordered a feasibility study for a water treatment plant to determine how best to address concerns about elevated manganese level in the Township water.<sup>152</sup> However, the Township has no current plans in place to construct a water treatment plant.<sup>153</sup>

122. Kurt Johnson, PE, a Senior Water Supply Engineer with TKDA, concluded that the Township's water system presents reliability concerns for water consumers not present in the City system, including concerns about water turnover rates, freezing, and increased possibility of failure and interruption of service.<sup>154</sup>

123. Mr. Johnson compares the City's water system, a mature system that has multiple interconnected wells and well pumps and looped mains, with the Township's water system, a system in its infancy that has a single well, a single pump, a single storage tower and a dead-end trunk main, and concludes that the City's water system is more reliable from a consumer's standpoint.<sup>155</sup>

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<sup>147</sup> T. 472-474.

<sup>148</sup> T. 487.

<sup>149</sup> T. 488,489.

<sup>150</sup> Ex. 53.

<sup>151</sup> Ex. 77, T. 1192, 1193.

<sup>152</sup> T. 436.

<sup>153</sup> T. 555.

<sup>154</sup> Ex. 54.

<sup>155</sup> T. 448.

124. Weather-related reliability issues are an important factor in the design of municipal water systems in Minnesota because water tanks in Minnesota can and do freeze occasionally. A design with a 50% water turnover rate helps prevent freezing.<sup>156</sup>

125. In a report dated December 1, 1999, Mr. Johnson expressed concern that the Township has only one current source of water, no back-up generator in the event of a power outage, a single, dead-end water main, and no reliable mechanism in place in the newly constructed water tower to avoid freezing.<sup>157</sup> The purpose of this report was to offer a professional opinion on the capability of the Township's water system to adequately and reliably provide water to the School District's new junior high school facility.<sup>158</sup>

126. Mr. Johnson also concluded that the high level of minerals and manganese in the Township's water would cause significant staining problems for consumers, laundry problems and maintenance/nuisance problems in utilities.<sup>159</sup>

127. The installation of a water treatment plant would address the Township's concerns about the excessive manganese level in the water.<sup>160</sup>

128. The Township's new water tower is designed to have a stir or submersible mixer installed in it.<sup>161</sup> Although the addition of a mixer may help prevent freezing, this approach is not foolproof.<sup>162</sup> The mixer might prevent ice formation at the top of the tank while failing to prevent a freeze where the water enters the tank bowl through the riser pipe, the area of tanks most vulnerable to freezing.<sup>163</sup> The likelihood of a freeze in this area is greater when there is a low turnover rate. If an engineer monitors the system, however, mechanisms exist to deal with these concerns about freezing.<sup>164</sup>

129. The School District's new junior high school facility will not become operational until the fire protection system is operational. Any delay in getting into the new facility will result in a domino-effect series of delays in other School District programs relating to the use of the old Central Junior High School location, which is being converted for a multitude of other School District purposes and programs.<sup>165</sup>

130. Water will enter the new junior high school building, first passing through a water meter, then splitting, with some water going through a hot water heating system and the rest going through a cold water system. There are two separate, independent piping systems that will deliver domestic water to school fixtures, interior and exterior.

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<sup>156</sup> Ex. 54, p. 5, T. 342.

<sup>157</sup> Ex. 54.

<sup>158</sup> T. p. 349-350.

<sup>159</sup> T. 352-353, 457-459.

<sup>160</sup> T. 436.

<sup>161</sup> Ex. 78, T. 433-434.

<sup>162</sup> T. 434-435.

<sup>163</sup> T. 448-449.

<sup>164</sup> T. 464-465.

<sup>165</sup> T. 83.



The mechanical hot water heating system will consist of two commercial grade hot water boilers, supply and return, and hot water piping throughout the building. The interior fire protection system will consist of sprinklers and the exterior fire protection system will consist of hydrants and a water main.<sup>166</sup>

131. Hallberg Engineering has projected an approximate daily consumption need for the new junior high school ranging from zero when the building is unoccupied or not in use, to 15 to 20,000 gallons per day during a normal school day.<sup>167</sup>

132. With regard to the exterior water system, Hallberg is concerned with the adequacy of the water and the adequacy of the water pressure to suppress exterior fires.<sup>168</sup>

133. With regard to the interior water system, the concern is to accomplish a lower water volume at a higher pressure. Generally, the school building needs approximately 500 gallons of water per minute, set at a specific pressure adequate to operate the system, preferably at or above a pressure of 40 psi residual pressure. The water pressure level is dependent upon how the interior pipes are sized. If the water pressure falls below 40 psi residual pressure at a given flow within the building, that can be remedied with the installation of a fire pump.<sup>169</sup>

134. The fire protection requirements for the new junior high school building are an exterior fire flow of 2,000 gallons per minute to the site for a two-hour duration, not to fall below 20 psi residual pressure at the given flow, and 500 gallons per minute for the inside sprinkler system.

135. The Township's water system would be able to meet the interior fire protection needs of the new junior high school building if the Township's water tower becomes operational and the School District hooks up to the Township's water system.<sup>170</sup>

136. In a 1999 report prepared for the City by Mr. Johnson of TKDA, Mr. Johnson expressed concern to the City that its fireflows could not be maintained adequately with its present water pressure levels and that the current levels were so low as to pose threats to firefighters. Low water pressure reduces the City's ability to run automatic sprinklers and to suppress fires.<sup>171</sup>

137. A feasibility study to address the City's concerns about low water pressure has not yet been completed. The purpose of the study is to explore whether the City should elevate the existing water tower by approximately 35 feet to improve water

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<sup>166</sup> T. 475-476.

<sup>167</sup> T. 479, 480.

<sup>168</sup> T. 480.

<sup>169</sup> T. 481-482.

<sup>170</sup> T. 480, 482-484, 486.

<sup>171</sup> Ex. 131, p. 5, T. 410-411.

pressure and increase the fire flows or whether it should build a new tower. The preliminary report recommends that the amount of volume and existing storage tank will suffice, when viewed in combination with the increased storage at the City's water treatment plants.<sup>172</sup>

138. The City's existing water system is capable of meeting all treated domestic water needs and all interior and exterior fire protection needs of the School District's new junior high school facility.<sup>173</sup>

139. In connection with the additions and upgrades to the City water system, the City prepared a financing package of approximately \$4,500,000 to cover the cost. \$1,000,000 is to be contributed from the City's sewer and water enterprise fund. In July 1999 the City sold bonds in the amount of \$3,700,000 to finance the balance. The Bonds will be repaid by an increase in the water rates of \$.25 per 1,000 gallons used. It is estimated that the average user's water bill will be increased from \$10.00 to \$12.00 per year.<sup>174</sup>

140. The out-fall for the City sanitary sewer system is the Metropolitan Council Forest Lake Interceptor with treatment being accomplished at the Metropolitan Waste Water Treatment Plant in St. Paul, Minnesota. The sewer interceptor capacity is sufficient to handle the urbanization of the Town and City according to the Regional Growth Strategy of the Metropolitan Council through 2020 and possibly through 2040.<sup>175</sup> The sewer system is maintained by the City public service department. Inspections are conducted by cameras as needed.<sup>176</sup> The City serves the Town with sanitary sewer on the north side of Clear Lake from Finley Court east to Highway 61, containing about 35 parcels.

141. The storm water sewer system of the City drains storm water to Clear Lake in the Town, to the lake of Forest Lake in the City and to Comfort Lake in Chisago County by means of Judicial Ditch #1.<sup>177</sup> The City has adopted a storm water management ordinance requiring developers for new projects and redevelopment projects to provide storm water management ponds meeting National Urban Runoff Program standards. Water storage is required to minimize flooding in unusual storm events and to provide treatment of the water before it is permitted to flow downstream.

## **Police and Fire**

142. Police service to the Town is furnished primarily by a contract with the Washington County Sheriff's Office. That office provides 70 hours of police coverage per week (two full-time officers).<sup>178</sup> The schedules of the two contract deputies vary.

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<sup>172</sup> T. 413.

<sup>173</sup> T. 447, 482, 485.

<sup>174</sup> T. 694-66.

<sup>175</sup> Ex. 134b.

<sup>176</sup> T. 910, 911.

<sup>177</sup> T. 912.

<sup>178</sup> T. 225.

Both officers are on duty approximately 9 days out of a typical month. On the other 21-22 days, one or the other is off-duty. Shift times for the single deputy on duty during those 21-22 days varies from 8 a.m. to 4 p.m. to 12 p.m. to 8 p.m., to 4 p.m. to 12 a.m.<sup>179</sup> There are periods of time when the School District's senior high school facility is in use when no Township deputy is on duty. In 1998 the Town spent \$9 per capita for police services while the City spent \$168 per capita.<sup>180</sup>

143. Additionally, the Sheriff's office provides a general patrol car serving the north area of Washington County north of Highway 96, an area 15 miles from north to south and 12 to 15 miles east to west. General patrol services are provided to all areas of the County, regardless of whether or not they are inside or outside the City limits. Therefore, general patrol services would be available to the School District on an equal basis whether the land is located inside or outside the City limits.<sup>181</sup>

144. A City police officer is assigned to the senior high school as a liaison officer. The officer's compensation is paid by Independent School District No. 831. The Town also has an agreement with the City by which it may call on City police services with a charge to the Town of \$100 per call.<sup>182</sup>

145. The City and Town are parties to a joint fire protection agreement together with Columbus Township in Anoka County and a part of Wyoming Township in Chisago County. The fire department has approximately 30 volunteer members and significant fire fighting equipment. The fire department presently has two stations, one located in the City of Forest Lake and one located in Columbus Township. The Township plans to add a fire facility in the eastern portion of the Town.<sup>183</sup> The water supply for the fire department is primarily obtained from the City water supply. The cost of the fire department is borne by the parties to the agreement based on the market value of the property in each municipality served by the fire department.<sup>184</sup> The fire rating for the City is 5 and the fire rating for the Town is 7.

146. The City police department consists of a staff of thirteen full-time sworn officers, including the Chief of Police, eight part-time officers and two non-sworn office staff members. The department provides 24 hour police protection to the City. There are six patrol officers, two supervising officers and an investigator. With the exception of a 4-hour period in the very early morning hours, a minimum of two and, most frequently, three, City officers patrol the jurisdictional limits of the City at any given time.<sup>185</sup> A police liaison officer is furnished to the senior high school and a police liaison officer is also provided to the two junior high schools located within the City.<sup>186</sup> Ongoing

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<sup>179</sup> Ex. 66.

<sup>180</sup> Ex. 267, p. 20.

<sup>181</sup> T. 1764.

<sup>182</sup> T. 259, 260, 1731, 1742.

<sup>183</sup> T. 1930.

<sup>184</sup> T. 766, 767, Ex. 110.

<sup>185</sup> T. 213.

<sup>186</sup> T. 211.

training by the department personnel is required and training is conducted with Chisago County, Washington County and other municipal entities.

147. The police department is involved in numerous community activities, including the Youth Service Bureau, sponsorship of a police explorer post, snowmobile safety classes, firearms safety classes, crime prevention programs, lake cleanup, youth safety camp, security training for local businesses and alcohol and tobacco education for businesses. All programs are open to the community at large and not restricted to residents of the City.<sup>187</sup> Programs also include the Restorative Justice Program and circle sentencing, curfew enforcement, truancy programs, participation in career fairs, DARE, Cops and Good Guys information exchanges and joint mutual aid agreements and training sessions with Chisago County and Washington County agencies.<sup>188</sup>

148. The police department has a number of marked and unmarked squad cars, some of which are equipped with mobile computer units. Four vehicles are equipped with automatic electric defibrillators. The City has a computer system that is linked with Chisago County, Washington County and other state agencies. Computers are tied in with state and national information centers.<sup>189</sup>

149. In 1990 the police department had 6,788 calls for service and in 1998 it had 8,663 calls for service. Calls for 1999 are estimated to approach 9,000 in number.<sup>190</sup> The City provides police service to the Town upon request at a per call charge of \$100. The budget for the City police department is approximately \$1,200,000.<sup>191</sup> Non-real estate tax sources of revenue including grants, fees, fines and forfeitures amounted to \$324,200 in 1998 leaving \$770,000 to be paid from tax levies.<sup>192</sup>

### **School District Police Concerns**

150. Approximately 1,750 students, from portions of Anoka, Chisago and Washington County attend Forest Lake Senior High School. The student body is socially and economically diverse.<sup>193</sup>

151. The School District's regular school year runs from mid-August until early June of the following year.<sup>194</sup>

152. During the regular school year, Forest Lake Senior High School opens between 6:00 and 7:00 a.m. School activities occur, generally, between 7:00 a.m. and 10:30 p.m. Food service begins at 7:15 a.m. School buses arrive at approximately 7:30

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<sup>187</sup> T. 232-240.

<sup>188</sup> T. 239-246.

<sup>189</sup> T. 257, 258.

<sup>190</sup> T. 251.

<sup>191</sup> T. 211.

<sup>192</sup> Ex. 157; T. 255, 256.

<sup>193</sup> T. 92.

<sup>194</sup> T. 93.

a.m. Staff members work from approximately 7:30 a.m. to 3:30 p.m. and students attend classes from 8:00 a.m. to 2:30 p.m. Student groups meet occasionally between 7:00 a.m. and 8 a.m. Food service is offered again after classes let out each day. Most after-school practice sessions end by 5:00 p.m. Athletic contests run from late afternoon to late evening, from approximately 3:45 p.m. to 10:00 p.m.<sup>195</sup>

153. Summer school runs from approximately one week after the end of the regular school year classes until mid-July. Summer school students attend classes on weekdays, in two shifts, between the hours of 8:00 a.m. to 3:00 p.m.<sup>196</sup>

154. The senior high school building is used for a variety of extended day student activities. These include tutoring, special education and extracurricular activities. Non-school student groups, church groups, adult education and community groups also use the facility as a community education center, before and after school and on weekends. On weekends, the building is open from approximately 7:30 a.m. to 6:00 p.m. During the summer months, a local theatre group uses the building for rehearsals. Large functions, such as a debate tournament, are also sometimes held then.<sup>197</sup>

155. Principal Mark Robertson considers the issue of safety to be a significant current concern at the high school. His concern is based upon his observations of previous drug and racial incidents at the school and general staff concerns about the ever-present potential for violence to occur on school property, as exemplified by the recent unanticipated Columbine Senior High School incident in Colorado.<sup>198</sup>

156. Initiatives have been undertaken by the Senior High School staff to address safety concerns raised by the Columbine incident. The staff has been retrained, and the school's crisis handbook has been totally revised. Students are watched more closely when passing in the hallways between classes and the school administration has tightened access to building entrances and exits during the school day.<sup>199</sup>

157. Principal Robertson's main safety concerns are the proximity and timeliness of police assistance when and if needed in an emergency situation. In the event of a large-scale, escalating incident, for example, Principal Robertson would be responsible for ensuring that enough uniformed officers could reach the site and contain the incident rapidly.<sup>200</sup>

158. The School District contracts with the City of Forest Lake's Police Department for the provision of services to the Senior High School, including police liaison services. The school has established a positive working relationship with the

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<sup>195</sup> T. 93-94.

<sup>196</sup> T. 98-99.

<sup>197</sup> T. 93, 94, 96-98.

<sup>198</sup> T. 99-100.

<sup>199</sup> T. 103.

<sup>200</sup> T. 104-105.

City's Police Department that allows the two entities to work in tandem, including open dialogues, behind-the-scenes cooperation, and exchange of information.<sup>201</sup>

159. Police Officer Robert Cockburn is the police liaison officer at Forest Lake Senior High School. He has been employed in this capacity for approximately six years and has been a member of the City's police force for over 26 years. Officer Cockburn works at the high school building, Mondays through Fridays, from 8:00 a.m. to 4:30 p.m. When and if incidents occur on the school premises, Officer Cockburn is often the first responder, the person who initially addresses the incidents.<sup>202</sup> Additional on-site security is provided by Sims Security prior to 8 a.m. and after 4:30 p.m., as well as during the school day.<sup>203</sup>

160. Incidents have occurred at Forest Lake Senior High School that have required the use of outside law enforcement officers. These incidents have included property damage, fights, assaults, drug issues, threats against students and staff, and theft.<sup>204</sup>

161. All police and ambulance calls from Forest Lake Senior High School are initiated either by Officer Cockburn or school administrators. Calls are dispatched through the Washington County Sheriff's Office, first, and second, through the City of Forest Lake Police Department, if necessary.<sup>205</sup> Occasionally, the school's calls for assistance have received no direct response from the Washington County Sheriff's Office.<sup>206</sup>

162. In Officer Cockburn's experience as liaison officer at the School District's senior high school, the City's Police Department has been able to respond to calls for assistance quickly and with sufficient numbers of officers to quell disturbances.<sup>207</sup> For these reasons, and given his training and experience, Cockburn believes the City's Police Department can provide the best law enforcement services for the school.<sup>208</sup>

163. Based upon his professional experience, Principal Robertson believes annexation of the School District's property in question to the City, thereby allowing the school to have primary access to the City's Police Department, would enhance law enforcement services to the high school.<sup>209</sup>

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<sup>201</sup> T. 105-106.

<sup>202</sup> T. 306-307.

<sup>203</sup> T. 111.

<sup>204</sup> T. 101-104, 308.

<sup>205</sup> T. 311, 312.

<sup>206</sup> T. 113, 117, 313.

<sup>207</sup> T. 308-309, 316.

<sup>208</sup> T. 316.

<sup>209</sup> T. 117.

## Administration

164. The Town is an urban township with a five member Town Board operating with powers granted under Minnesota Statutes §368.01. The City is a statutory city governed by a City Council consisting of a mayor and four council members with the mayor having the same voting authority as all other council members.<sup>210</sup>

165. The Town office staff consists of a Town administrator, a clerk and a treasurer. The Town has a public works department consisting of five employees including a supervisor, a heavy equipment operator, two persons who are utility and water certified and two who are sewer certified.<sup>211</sup>

166. The City administration department consists of five full time people, including the City administrator, an accounting-payroll person, a utility department person, a secretary and a zoning administrator-building inspector. The department has state of the art computer equipment, including a 1999 software upgrade installed in the accounting and utility billing departments at a cost of \$50,000.

167. The Town has road maintenance equipment including a motor grader, two dump trucks and two tractors.

168. The City has a public works department made up of six full time workers and a supervisor. The street maintenance department oversees the general maintenance of the City streets and the storm sewers and the water department oversees the functions of the water/sewer utilities. The City has a full complement of public works equipment, including two single axle dump trucks, a jet vac truck for cleaning City sewers, a bobcat, a street sweeper and a road grader.<sup>212</sup>

169. City employees are unionized. Police officers are represented by Law Enforcement Labor Services, Local No. 11. Administrative employees are covered by the American Federation of State, County and Municipal Employees. The maintenance department employees are members of the International Union of Operating Engineers, Local No. 49. Town employees are not unionized.<sup>213</sup>

170. Within the City Hall complex are located the administration offices, the police department, the City library, and court facilities for the northern part of Washington County. The library was to be merged into the Washington County Library System at the end of December 1999. A branch of the Washington County License Bureau is located in Northland Mall within the City.<sup>214</sup> The Youth Service Bureau is located in a building owned by the City at the City Hall complex. Washington County Human Services has a facility within the City.<sup>215</sup> The City has begun preliminary

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<sup>210</sup> T. 665.

<sup>211</sup> T. 1301, 1303.

<sup>212</sup> T. 673.

<sup>213</sup> T. 760.

<sup>214</sup> T. 674, 675.

<sup>215</sup> T. 680.

discussions with Washington County to locate a northern government center within the City.

171. For almost 40 years, the Township Hall was adjacent to the City Hall on what is now the City Offices property.<sup>216</sup> Even after relocation, Town board and City council meetings are held on the same nights.<sup>217</sup>

172. The Town has one large park of 60 acres, that is primarily woods and wetlands, but has ball fields and playground equipment. There are four small parks equipped with children's play equipment.<sup>218</sup> Public recreational facilities also include picnic shelters, a DNR public boat access on the western shore of Clear Lake and two DNR public boat access points on the eastern shore of Forest Lake. Commercial recreation facilities include two golf courses, one of which is owned by the Township.<sup>219</sup> The Town maintains a policy that requires all developers to donate a portion of their land for public parks or open space, or to provide cash in lieu of land to upgrade existing park and recreational facilities.

173. The City has a park board established by ordinance made up of five members appointed by the Mayor and confirmed by the City Council. The City has a number of parks and recreational areas, including Bixby Park and Beltz Park with a skating rink, lighted tennis courts and baseball fields. Lakeside Park, on the westerly shore of Forest Lake, is used by the community for picnicking, swimming, fishing contests and other recreational activities. It has a new gazebo in which weddings are conducted and musical events are held. There are numerous recreational facilities attached to the junior high schools and elementary schools within the City. The recreational facilities are used by the community as a whole.<sup>220</sup>

174. A senior center which was constructed in approximately 1986 is located within the City. The construction was funded through a joint powers agreement between the Town and the City. Both municipalities contribute to the ongoing maintenance of the building.

175. The Town retains Resource Strategies Corporation as its planning consultant, Ehlers & Associates Inc. as its fiscal consultant and Bonestroo Rosene Anderlik & Associates as its consulting engineers.

176. The City employs the planning firm of Sanders, Wacker and Bergly as its planning consultants and the firm of Toltz, King, Duvall and Anderson as its consulting engineers. The firm of Larson, Allen, Weishair and Company is the City's auditor. The firm of Wilson Development advises the City and its Economic Development Authority on tax increment and economic development financial matters.

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<sup>216</sup> T. 1133, 1230.

<sup>217</sup> T. 1226.

<sup>218</sup> T. 1305, 1457.

<sup>219</sup> T. 1181, 1306.

<sup>220</sup> T. 676-680.



## Fiscal Matters

177. For the year 1999 the City had tax capacity of \$5,695,552 and the Town had tax capacity of \$5,526,946. The tax capacity for the City for the year 2000 is \$6,284,616 and for the Town, \$5,847,968. The tax rate for the County for the year 2000 is 28.097%. The tax rate for the City for the year 2000 is 30.245% and the tax rate for the Town is 15.152%. The tax rate for the school district is 60.383%. The tax rate of the Town is stable while the City's tax rate is increasing.<sup>221</sup>

178. The School District property in question is tax-exempt and, therefore, has no effect upon the net tax capacities or local tax rates.

179. The Town has bonded indebtedness of \$2,586,000 including a general obligation utility revenue bond issued by the Town in 1999 in the sum of \$1,740,000.<sup>222</sup> The City had bonded indebtedness of \$5,277,119 including a general obligation water revenue bond issued in 1999 in the sum of \$3,700,000.<sup>223</sup>

180. At the end of 1998, the City had a general fund balance of \$394,236. The fund balance was expected to increase to \$500,000 by the end of 1999.<sup>224</sup> The City had a special revenue fund (Capital Improvement Fund) having a balance of \$3,027,887 at the end of 1998. The debt service fund had a balance of \$1,412,274. The City's enterprise fund (operation of its water and sewer utility) had a cash balance at the end of 1998 in the sum of \$2,833,444.

181. The proprietary fund of the Town at the end of 1998 had cash assets of \$1,368,868. The capital projects fund had a deficit of \$160,371. The debt service fund had a cash balance of \$1,139,040. The general fund had a balance of \$601,652.<sup>225</sup>

182. Based on the budgets of the Town and City for the year 2000, in a combined community a homeowner having a home valued at \$130,000 in the old Town would pay a City tax of \$373 or \$123 more than the pre-combination taxes. A homeowner in the old City having the same value home would pay \$373 in City taxes or \$126 less than the pre-combination taxes.<sup>226</sup> The Town has a taxable market value for the year 2000 of \$431,708,000 and the City has a taxable market value for the year 2000 of \$328,002,500.<sup>227</sup>

183. The City receives state aid road funds on an annual basis in the average amount of \$203,000. A town is not eligible to receive state aid road funds. If the Town is annexed to the City or if it is separately incorporated, it would be eligible to receive

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<sup>221</sup> Ex. 267.

<sup>222</sup> Ex. 267, p. 10.

<sup>223</sup> Ex. 163.

<sup>224</sup> T. 706, 707.

<sup>225</sup> Ex. 267.

<sup>226</sup> Ex. 140, p. 9.

<sup>227</sup> Ex. 207.

state aid road funds of approximately \$280,000.<sup>228</sup> A merged community would receive about \$460,000 in funding.<sup>229</sup>

184. The Town has a bond rating of A2. The City has a bond rating of Baa2. On July 26, 1999, the Town and the City each sold its general obligation utility bonds. The Town's bond issue was payable over 20 years and the City's bond issue was payable over 25 years. The net interest cost of the City's bonds was 5.32210% and the net interest cost of the Town's bonds was 5.2976%.<sup>230</sup>

185. The City uses tax increment financing as a tool for development and redevelopment in the City. The method commonly used by the City is called "pay-as-you-go" in which the developer pays the up front costs of the development and is reimbursed over a period of years for the City's portion of the development costs. However, the City is only required to make its contributions if real estate taxes are paid on a current basis.<sup>231</sup> Neither tax increment financing nor economic development authority tools are available to towns to aid in development.

186. The City has also established an Economic Development Authority to aid in development and redevelopment of the City.<sup>232</sup>

187. Funds are available from the Minnesota Board of Government Innovation and Cooperation in an amount not to exceed \$100,000 per year for a period of 4 years to aid in the combination of the Town and City.<sup>233</sup>

188. There are no significant environmental problems that would affect either annexation or incorporation.

## City-Town Links

189. In 1874 Forest Lake Township was named and split from Marine Township.<sup>234</sup> Residents of the City and Township jointly celebrated the diamond Jubilee of this event in 1949, and the Mayor Pepin proclaimed September 21 a community holiday.<sup>235</sup> Of the community participants in the Jubilee's "Bearded Men" contest, nearly half were City residents.<sup>236</sup>

190. The City of Forest Lake celebrated its centennial in 1993. The community organized a 10-day event with 100 activities. The organizers and participants in the

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<sup>228</sup> T. 904. 1933.

<sup>229</sup> T. 922.

<sup>230</sup> T. 724-725.

<sup>231</sup> T. 748, 749.

<sup>232</sup> T. 752-754.

<sup>233</sup> Minn. Stat. § 465.87.

<sup>234</sup> Ex. 11.

<sup>235</sup> T. 1120, Ex. 11.

<sup>236</sup> Ex. 10, T. 1122.

event included people from both the City and the Township.<sup>237</sup> The celebration was modeled after the earlier community involvement in the Township celebration.<sup>238</sup> Township resident Barbara Swanson and City resident Howard Lestrud in similar fashion co-chaired this celebration and over 300 Township and City volunteers participated.<sup>239</sup>

191. Since 1960, the City has annexed significant property from the Town. In 1965 property was annexed which became the Forest Lake Industrial Park on the east side of Interstate Highway 35. One lot remains undeveloped in the plat. In 1985 the City annexed property on the west side of Interstate Highway 35 which was developed as Everton Park. The City used tax increment financing for the installation of water, sewer and streets. There are numerous businesses in the park including car dealerships, Team Management Molding and Springs, Inc. One or two undeveloped lots remain in Everton Park.

192. In 1993 the remaining property from the west line of the City to the east line of Anoka County consisting of 840 acres was annexed to the City. Subsequent to annexation, City police service was furnished to the area.<sup>240</sup> A comprehensive plan was prepared after various meetings with area residents and review by the City Planning Commission.<sup>241</sup> The annexation was commenced by a petition signed by 90% of the property owners in the area.<sup>242</sup> Significant commercial activity has occurred in the annexed area including Menards and Country Inn Suites. A new residential plat has been developed.<sup>243</sup>

193. In 1994 Richard McNamara, then a Town Board member, requested annexation of 34 acres south of 11<sup>th</sup> Avenue SW to the City. The area has been developed into a 36 unit town home project.

194. Over the years the Town and City have entered into a number of joint powers agreements. They are parties to a joint fire agreement which furnishes fire fighting and emergency services to all of the City and Town, a part of Columbus Township in Anoka County and a part of Wyoming Township in Chisago County.<sup>244</sup> The Town and City are parties to an agreement for the operation of Forest Lake Seniors Community Center with both parties contributing an equal amount per year for the maintenance and operation of the facility.<sup>245</sup> The communities are parties to the Lake Improvement Association which has as its primary function, weed harvesting on the lake of Forest Lake. Each entity contributes an equal share to the purchase of capital

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<sup>237</sup> T. 627-29

<sup>238</sup> T. 629-630.

<sup>239</sup> T. 1121, 627, 1145.

<sup>240</sup> T. 263.

<sup>241</sup> Ex. 107, T. 1037-1038.

<sup>242</sup> T. 757-758.

<sup>243</sup> T. 1038-1039.

<sup>244</sup> Ex. 110.

<sup>245</sup> Ex. 111.

equipment. The operations of the program are paid 25% by the City and 75% by the Town.<sup>246</sup> The City and Town are parties to a Lake Surface Board agreement for the purpose of controlling lake surface activities including fishing contests and snowmobile races.<sup>247</sup>

195. The City, Town and New Scandia Township have been parties to a water management organization known as the Forest Lake Water Management Organization. While that organization is still in existence, its duties are being assumed by a watershed district covering the City, the Town, a part of New Scandia Township and a part of Wyoming Township in Chisago County.<sup>248</sup> The Town and City operate a joint composting facility at a location in the City. The City funds \$7,000 of the expenses and the Town funds \$3,000 of the expenses.<sup>249</sup> The Town and City are parties to a residential garbage removal and recycling agreement whereby one contractor has been awarded a franchise for these services at rates established in the agreement.

196. The Youth Service Bureau in Forest Lake is a non-profit community based agency serving young people. Its goal is to prevent delinquency through prevention and early intervention services. The Bureau serves the area of the Forest Lake School District plus Chisago County. The Bureau is funded by both the City and the Township and its services are available to residents of both areas.<sup>250</sup> The Bureau would likely be able to obtain more grant dollars if it was located in a city with a larger population base.<sup>251</sup> At times the delay in obtaining deputy sheriff services has caused problems for the Bureau. For example, on one occasion there was a 45 minute wait for a deputy to arrive at the home of a potential suicide. Another problem situation is the effect of a delay in transporting young people to an emergency shelter or custodial arrangements.<sup>252</sup>

197. The professionally designed Sharewood Forest recreation area and the grandstand at Schoemacher Field were financed by community wide efforts and constructed in part by community volunteers.<sup>253</sup> Involvement by a citizen group composed of City and Township residents resulted in the owners and developers of Castlewood Golf Course changing development plans and redesigning the golf course to preserve its previous benefits.<sup>254</sup>

198. Township residents come to the City to purchase their food, hardware and medicine, participate in youth sports and attend church, meetings of service organizations and elementary and secondary schools.<sup>255</sup>

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<sup>246</sup> T. 769.

<sup>247</sup> T. 770.

<sup>248</sup> T. 770-773.

<sup>249</sup> T. 773-774.

<sup>250</sup> T. 618-620, 640.

<sup>251</sup> T. 622.

<sup>252</sup> T. 624-26.

<sup>253</sup> T. 797-8.

<sup>254</sup> T. 1402.

<sup>255</sup> T. 567-8; 1275; 1264-1265.

199. A non-scientific poll of the City and Town conducted by the *Forest Lake Times* newspaper showed 165 respondents in favor of merger and 60 opposed.<sup>256</sup> The poll, conducted as a part of the 1997 joint merger study, revealed no significant difference between the views of City and Township residents concerning the paramount issues of density and land uses in the Township.<sup>257</sup>

200. A telephone survey of 300 City and Town residents was conducted in connection with the 1997 merger study. Forty percent of the respondents lived in the City, 59% in the Township and 1% were not sure where they lived. The survey found that both City and Township residents were generally satisfied with the level of services being provided. Sixty-nine percent of City residents thought it was very important to preserve woodland, environmentally sensitive areas and open spaces. Forty-three percent of the City residents thought it was important to preserve agricultural land in the township. Forty-five percent of Township residents were willing to pay more taxes or user fees to improve needed services while an equal number were not willing to pay more. Seventy-seven percent of Township residents were pleased with the way land in the Township has been used for growth. Seventy-one percent felt that they had adequate representation from their township form of government.<sup>258</sup>

201. Government officials have moved between the City and the Town. Officers Cockburn and Aschenbrener are Township residents serving as City of Forest Lake police officers.<sup>259</sup> Washington County Commissioner Hegberg resided in the Township for 10 years and in the City for 13 years.<sup>260</sup> Charles Robinson was employed as Township Administrator for 17 years before leaving to become City Administrator for the last six years.<sup>261</sup> Mayor Joseph Daninger resided in the Township for over 22 years and served on its planning commission for 10 years prior to moving to the City where he has resided for the last 12 years and spent the last five years as Mayor.<sup>262</sup>

202. A primary benefit to the community of merged governments would be a united community development plan from a single political entity rather than two divergent ones.<sup>263</sup> By allowing all community members to vote on a single strong group of elected leaders, those governing could be held accountable on a community wide basis for decisions which affect community residents, and duplication of services could be avoided.<sup>264</sup>

203. By the time of the hearing, the community had already spent in excess of \$188,000 for attorney's fees and an indeterminate amount for consultants and of the time of government officials and employees on the issues of merger, incorporation and

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<sup>256</sup> Ex. 1, chap. 1, p. 1; T. 576.

<sup>257</sup> T. 806, Ex. 136.

<sup>258</sup> Ex. 136; T. 571-73.

<sup>259</sup> T. 317, 544.

<sup>260</sup> T. 593.

<sup>261</sup> T. 649, 650.

<sup>262</sup> T. 1107-1108.

<sup>263</sup> T. 1234, 1236.

<sup>264</sup> T. 1276.

annexation since 1992.<sup>265</sup> The community cost of contesting these issues in the future could be substantial.

204. Upon annexation of the Town to the City, the City proposes to provide governmental services to the annexed area as follows:

a. Form of Government. The consolidated community will have a City Council with a mayor and four city council members. The mayor will serve for a two year term and the council members will serve four year terms and will run at large from the entire community.<sup>266</sup>

b. Police Service. The City will initially add at least three police officers to its department and establish 24 hour police coverage to the entire community. Until the additional personnel are fully employed, contracted sheriff's personnel may continue to be used during the period of their contracts. Additional hires of the City police department will be placed on duty within five or six months. Additional police officers will be provided as deemed appropriate by the City Council of the consolidated community.<sup>267</sup>

c. Fire Service. The fire department is operated under a joint powers agreement including the entire City and the entire Town at the present time. The operation of the fire department will remain as it is.<sup>268</sup>

d. Public Works Department. Over a period of time the public works departments of the two entities will be merged and operate out of one facility. Job descriptions will be reviewed and new job classifications will be established. Non-union employees will become union employees, or not, as relevant statutes are applied. There likely will not be any reduction in the number of personnel because there will not be a reduction in the amount of work that will need to be performed.<sup>269</sup>

e. Administration Department. The same process will be followed as that for the public works department.<sup>270</sup>

f. Budgets. Consultants will be employed to combine the budgets. Terminology and methodology will need to be changed.<sup>271</sup>

g. Bonded Indebtedness. Bonded debt will become the debt of the community and paid as proposed in issuing the debt.<sup>272</sup>

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<sup>265</sup> T. 79, 551-552.

<sup>266</sup> T. 787.

<sup>267</sup> T. 264, 265.

<sup>268</sup> T. 788.

<sup>269</sup> T. 762-764.

<sup>270</sup> T. 764.

<sup>271</sup> T. 789, 790.

h. Reserve Funds. Reserve funds will be combined and become the reserve funds of the community.<sup>273</sup>

i. Water. The City has the ability to currently provide fully treated water to Forest Lake Senior High School, as it presently does, the new junior high school, the Southview development and a proposed new 250 unit residential development. It may also furnish water to the north and east sides of Clear Lake. All fire flow standards can currently be met.<sup>274</sup>

j. Sewer. There is no need to interconnect the sewer systems. Expansion for the foreseeable future will occur from existing systems.<sup>275</sup>

k. Planning. Existing zoning will remain in place initially. Zoning changes will require a four-fifths vote of the City Council. Planning consultants will be employed to develop a program that will allow plans and ordinances to be coordinated by looking at consistencies and conflicts. A process will be established to meet with the public and planning commission.<sup>276</sup>

l. The City will apply for a \$400,000 grant from the Minnesota Board of Government Innovation and Cooperation to assist in accomplishing the combination of the municipal governments.<sup>277</sup>

## **Metropolitan Council**

205. Prior to the sunset of the Municipal Board, the Metropolitan Council provided the MMB with information submittals, including information about current land use, demographics of the areas in question, and applicable regional systems. The Council would then make a determination as to what, if any, impact a proposed annexation or boundary adjustment would have on the regional system and provide information about a local comprehensive planning process.

206. Traditionally, the terms "urban" and "city" have been used synonymously by planners to connote the availability of a full range of services, including central sanitary sewer, public water, schools, higher levels of police and fire protection, a full range of housing types and densities, and significant employment opportunities. Police protection in an urban community is available 24 hours per day, 7 days per week, for

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<sup>272</sup> T. 790.

<sup>273</sup> T. 790.

<sup>274</sup> T. 371-372.

<sup>275</sup> T. 911.

<sup>276</sup> T. 1044-1045.

<sup>277</sup> T. 1966.

example. The City has the full range of these urban characteristics; the Township does not.<sup>278</sup>

207. The Metropolitan Council's current role is to review and comment on plans, addressing each plan's compatibility and conformity with regional plans and systems, with an eye toward looking for possible adverse impacts on the regional system. The Council has had the power to direct a change in the local comprehensive plan.<sup>279</sup>

208. In 1998, as part of the annexation-incorporation proceedings then pending before the Minnesota Municipal Board between the Town and the City, the Metropolitan Council approved a staff recommendation to prepare and submit an informational statement to the Municipal Board, and testify at the hearing on regional growth strategy and systems. It authorized staff to present a statement to the Municipal Board that the incorporation of Forest Lake Township is not consistent with regional policy, and to advise the Municipal Board that annexation of all or part of the Township within the Municipal Urban Service Area would be consistent with Council policy.<sup>280</sup> There has been no subsequent amendment to the Metropolitan Council Regional Blueprint.<sup>281</sup>

209. A May 11, 1999 Metropolitan Council staff report stated that the April, 1998 council action supporting annexation would strengthen the sense of community.<sup>282</sup> The Met Council staff has continued to incorporate the recommendation that it continue merger discussions in all memoranda directed to the Township.<sup>283</sup>

210. At its June, 1999 meeting, Metropolitan Council Chair Ted Mondale indicated that Governor Ventura did not want the Council involved in "governance issues", but no votes or official action have ever been taken by the Met Council upon those issues.<sup>284</sup>

211. Metropolitan Council Planner James Uttley prepared an Information Submission, dated August 16, 1999, regarding the School District's petition to have approximately 133 acres of its property within the Township annexed to the City.<sup>285</sup> Mr. Uttley concludes that the proposed annexation is not expected to impact any of the designated regional systems. He concludes that the proposed annexation should have no substantial impact on the demographics of the Forest Lake communities (size of the populations, households and the number of employed persons), as there is no existing or planned residential property within the designated acreage. He observes that the school district property is located within the existing Township MUSA, within an area of the Township that is classified by the Council as an existing urban area, and that these

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<sup>278</sup> Ex. 67.

<sup>279</sup> T. 180.

<sup>280</sup> Ex. 67; T. 131-132.

<sup>281</sup> T. 133, 165.

<sup>282</sup> Ex. 134a.

<sup>283</sup> T. 153.

<sup>284</sup> T. 1560, 1562, 1570, 1571.

<sup>285</sup> Ex. 68, T. 135



designations will not change if the property is annexed. He states that the proposed annexation is not expected to impact the regional aviation system, the regional recreation open space system, or the regional transportation system. Mr. Uttley concludes that the proposed school district annexation is not expected to impact the regional wastewater system, as regional sewer service is available to the entire property regardless of municipal jurisdiction.<sup>286</sup>

212. No changes have been made to the Regional Blueprint since August 16, 1999, that would alter Mr. Uttley's recommendations.

### **Frederic Knaak**

213. Frederic Knaak is a 6-year resident of the southeast area of the township. He is an attorney and former state senator. His children attend elementary school in Scandia and his telephone exchange is the same as the adjacent New Scandia Township. Mr. Knaak patronizes service businesses in Scandia. He notes that there is a large swampland between his residence and the commercial area of Forest Lake and for that reason he believes that sewer will not be extended to his property by either the City or an incorporated township. He believes that emergency service from Forest Lake will not be improved due to the geography. Mr. Knaak notes that his area is entirely rural in character and asserts that the resident's and Town's petitions should be denied or that his area should be allowed to join New Scandia Township. He takes no position on the School District petition.<sup>287</sup>

214. Fifteen affidavits were filed by Mr. Knaak's neighbors.<sup>288</sup> They are all in agreement with the statements and arguments advanced by Mr. Knaak. Some of the residents of the southeast portion of Forest Lake township presently have a mailing address of Scandia, MN 55073.<sup>289</sup> All of the residents state that they identify more with Scandia than Forest Lake.

215. The southeast area is presently zoned agricultural by the township.<sup>290</sup> Currently the township has no plans to extend water service to the southeast township residents.<sup>291</sup> It would be expensive to provide water and sewer to the southeast section of the township from the west due to the wetlands.<sup>292</sup>

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<sup>286</sup> Ex. 68, T. 136.

<sup>287</sup> Ex. 303.

<sup>288</sup> Ex. 300-302, 304-315.

<sup>289</sup> Ex. 304-5-6.

<sup>290</sup> Ex. 266.

<sup>291</sup> T. 561.

<sup>292</sup> T. 1701-2

216. Most of Forest Lake Township is classified as Urban or Urban Reserve by the Metropolitan Council 2040 Plan except for small areas in the northeast and southeast corners of the township that are designated "Permanent Rural".<sup>293</sup>

217. The township of New Scandia to the east of Forest Lake township is designated as "Permanent Rural" in the Metropolitan Council's Metro 2040 Regional Growth Strategy.<sup>294</sup>

218. A "Permanent Rural" area is land that is planned to stay rural through 2040. Its non-farm residential uses are expected to have densities of no more than 4 dwellings per 40 acres. Urban Reserve land is land needed for possible urbanization to accommodate regional growth forecasts.<sup>295</sup>

## Public Testimony

219. Education Connection is a grassroots organization that builds community support for and involvement in the Forest Lake Area Schools. It presented a petition with over 400 signatures in support of the annexation of the school district property.<sup>296</sup> The group believes that construction of the junior high school and improvements at the senior high school are being held up because of political disagreements over water service. About two-thirds of the children in the school system live outside the city and town (e.g., Scandia, Wyoming, Columbus township, Lino Lakes). The bond issue that allowed the junior high to be built passed with 60% approval.<sup>297</sup>

220. A number of community members made the point that a decision about merger or annexation should be made in a democratic fashion, by a referendum of the community.<sup>298</sup>

221. Many residents of the township made the point that they chose a more rural way of life with a lower level of service and with lower taxes and that they should not be compelled to give that up.<sup>299</sup> It was observed that the township was a well administered responsive government with a low debt structure.<sup>300</sup> Some saw their taxes increasing if annexation occurs.<sup>301</sup> Some felt that they were unlikely to receive sewer or water even if annexation occurred.<sup>302</sup> One commenter asked that incorporation be granted to finally end the prospect of future border wars.<sup>303</sup>

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<sup>293</sup> Exs. 3, 5, 134b

<sup>294</sup> Exs. 5, 134b

<sup>295</sup> Ex. 134b, p.3.

<sup>296</sup> T. 1212, Exs. 400, 408-9, 411, 420.

<sup>297</sup> T. 1256.

<sup>298</sup> T. 1216-7, 1222, 1240, 1245, 1258, Exs. 403, 416, 421.

<sup>299</sup> T. 1220, 1270, 1277, Exs. 410, 414, 416, 418.

<sup>300</sup> T. 1258, 1279, Ecs. 412, 419.

<sup>301</sup> T. 1269.

<sup>302</sup> T. 1241, 1254, 1269, 1273.

<sup>303</sup> T. 1260.

222. Some commenters observed that there was unnecessary duplication because of two local governments.<sup>304</sup> They argued that Forest Lake was in reality one community already and argued in favor of annexation.<sup>305</sup> It was mentioned that many residents are unaware of city-town boundaries and that confusion is a common result.<sup>306</sup> Some saw benefit in a unified community development plan.<sup>307</sup> Others thought increased state aid would be possible if annexation occurred.<sup>308</sup> Some Southview residents believe the city would deal more effectively with matters such as water quality and roads.<sup>309</sup>

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### CONCLUSIONS OF LAW

1. The Administrative Law Judge has jurisdiction in this matter through the Office of Strategic and Long-Range Planning under Minn. Stat. §§ 414.01, 414.02, 414.031, 414.11-12 and the Order of the Commissioner of Administration, dated September 29, 1999.

2. That proper notice of the hearing in this matter has been given.

3. That the subject area described in the School District Petition (A-6083) is about to become urban or suburban in character.

4. That municipal government in the area proposed for annexation in the School District Petition is required to protect the public health, safety and welfare.

5. That annexation of the area described in the School District Petition to the City is in the best interest of the subject area.

6. That the increase in revenues for the City bear a reasonable relationship to the monetary value of the benefits conferred upon the area annexed under the School District Petition.

7. That the remainder of the Township would not suffer undue hardship by virtue of the annexation of the land described in the School District Petition.

8. That the subject area described in the resident's or OGFL Petition (A-6091) is about to become urban or suburban in character.

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<sup>304</sup> T. 1226, 1248.

<sup>305</sup> T. 1229, 1264, 1267, 1276, Exs. 401, 404.

<sup>306</sup> T. 1252, 1266.

<sup>307</sup> T. 1234, Exs. 406, 407.

<sup>308</sup> T. 1251.

<sup>309</sup> T. 1282, Ex. 405.

9. That municipal government in the area proposed for annexation in the resident's petition is required to protect the public health, safety and welfare.

10. The annexation of the land described in the resident's petition to the City would be in the best interest of the subject area.

11. That the increase in revenues for the City bear a reasonable relationship to the monetary value of benefits conferred upon the annexed area under the resident's petition.

12. That the property proposed to be incorporated under the Town's petition (I-66) is now or is about to become urban or suburban in character.

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

14. That the proposed incorporation would not be in the best interests of the area under consideration.

15. That the area described in the Town's petition would be better served by annexation to an adjacent municipality.

16. That citations to transcripts or exhibits in these Findings of Fact do not mean that all evidentiary support in the record has been cited.

17. 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 upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

#### ORDER

1. IT IS HEREBY ORDERED that the Town of Forest Lake is annexed to the City of Forest Lake as requested in Petition A-6091.

2. IT IS FURTHER ORDERED that the annexation shall be effective as of the date of the election and qualification of the new City Council as set out in paragraph 3 of this Order.

3. IT IS FURTHER ORDERED that the form of government shall be "Optional Plan A". An election shall be held on May 16, 2000 to elect a mayor and four council persons at large who shall serve until January 1, 2001. Charles P. Robinson shall be the acting clerk for the election and he shall prepare the 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 Forest Lake City

Hall and the Election Judges shall be appointed equally from among those serving in the last election of the Town and of the City. The hours of the election shall be from 7:00 a.m. to 8:00 p.m.<sup>310</sup>

4. IT IS FURTHER ORDERED that an election of a mayor and four council members shall be held on November 7, 2000. The mayor shall be elected for a two year term commencing January 1, 2001. Thereafter, they shall be elected for four year terms. Two council members shall be elected for four year terms. Thereafter they shall be elected for four year terms.

5. IT IS FURTHER ORDERED that in all other respects, the elections shall be conducted in conformity with the provisions of the Minnesota Statutes concerning the conduct of municipal elections insofar as applicable.

6. IT IS FURTHER ORDERED that the ordinances of the Town of Forest Lake, as well as the Land Use and Planning Controls and other ordinances, and all license privileges including the number of liquor licenses already authorized by the State of Minnesota, shall continue in effect within the former boundaries of the Town of Forest Lake, until repealed or replaced by the new governing body of the City of Forest Lake.

7. IT IS FURTHER ORDERED that the petition of the Township to incorporate as a City (I-66) is denied.

8. IT IS FURTHER ORDERED that the population of the post annexation City of Forest Lake is approximately 15,050 and that the Office of Strategic and Long-Range Planning retains jurisdiction for the purpose of determining the population of the new municipality, if the present population determination is found to be incorrect.

9. IT IS FURTHER ORDERED that the effective date of this Order is March 23, 2000.

Dated this 23<sup>rd</sup> day of March 2000.



GEORGE A. BECK  
Administrative Law Judge

<sup>310</sup> The annexation statute does not specifically provide for an election. However, all parties appear to support an election in recognition of the fact that a combination of the Town and the City in this case is similar to a merger or consolidation where an election is required.

Reported: Court Reported by Kirby A. Kennedy and Associates (612)922-1955.  
Transcript prepared, eight volumes.

## **MEMORANDUM**

This is a consolidated proceeding under Chapter 414 to consider three petitions filed with the Minnesota Municipal Board. The School District filed first, seeking to have its 133-acre Township property south of and adjacent to the City annexed to the City. Residents of the Township then filed to have the City annex the entire Township. The Town Board then filed to incorporate the entire Township as a City.

### **Statutory Factors – Town and City**

Incorporation of a new municipality is governed by Minn. Stat. § 414.02. The statute sets out thirteen factors that must be considered in arriving at a determination. The factors are nearly identical to the fourteen factors that must be considered in an annexation case under Minn. Stat. § 414.031. The following discussion relates these factors to the evidence in this hearing record:

**(a) Present population and number of households, past population and projected population growth of the subject area and adjacent units of local government.**

The City and Town are located in the northwest corner of Washington County. The City has a population of approximately 7000 persons in an intensively developed area of 2919 acres. The Town has a population of 8050 persons in an area of almost 20,000 acres. The combined population of the Town and City was 9927 in the year 1980 and has grown to a population of more than 15,000 in the year 2000. The area of the community within the Town will experience substantial additional population growth in the near future. Two residential subdivisions proposed for the Town will add 700 housing units within the next few years alone. The Metropolitan Council projects that there will be 7000 households in the community by the year 2010 and 8700 households in 2020.

The Forest Lake community is part of the Twin Cities metropolitan area and is sharing in its growth. The City and Town are a desirable place to live and will need to plan for an additional 7000 residents from 2000 to 2020. There is very little space remaining in the City for residential development. The population and household data show substantial past and projected growth. It clearly supports either incorporation or annexation. Population growth and commercial development within the Town area will mandate the establishment of municipal services such as public sewer and water systems, increased fire protection, and 24 hour police protection.

**(b) Quantity of land within the subject area and adjacent units of local government; and 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 annexed or incorporated is just under 20,000 acres. The City has 2658 acres of intensively developed urban property. The Town has a gently rolling topography. The Town and City share the largest geographical feature of the area, the lake of Forest Lake, containing approximately 2,250 acres. The lake is squarely in the center of the most intensively developed part of the overall community and, in fact, is a major cause of that development. The Town and City share the shoreline, the recreational attributes and the need to protect the lake environment.

The Town and City are both included within two major watershed districts, the Rice Creek Watershed District and the Comfort Lake-Forest Lake Watershed District. The soils of the Town have severe limitations for on-site septic systems. Development in the Town, as already proposed, requires extension of municipal water and sewer.

There are no physical features of the Town or City that will prevent either incorporation or annexation. However, having the lake of Forest Lake within one jurisdiction would seem to allow for more efficient and effective protection of this important community resource. Also, incorporation as proposed would lock the City in on three sides, which would substantially limit its growth. As discussed later, Mr. Knaak has suggested that the Hardwood Creek Water Management Area requires the separation of his neighborhood from a city.

**(c) Degree of contiguity of the boundaries between the annexing municipality and the subject area.**

The Town boundaries are adjacent to the City on the entire south boundary of the City, the entire easterly boundary of the City and the majority of the northerly boundary of the City. As noted above, incorporating the Town as a separate City will limit the ability of the City of Forest Lake to grow and develop at the expense of the entire community. It would create a new City that nearly encircles the existing City. The nearness of the Town and the City and the extensive joint boundary makes a better case for annexation than incorporation. Creating two cities and thereby requiring two sewer systems, two water systems, two police departments, two administration departments and numerous ongoing joint powers agreements in one urban area is not in the best interests of the community. There is no lack of contiguity that would argue against annexation.

**(d) Present pattern of physical development, planning, and intended land uses in the subject area and the annexing municipality including residential, industrial, commercial, agricultural and institutional land uses and the impact of the proposed action on those land uses.**

The physical development of the City has provided in large part the commercial, industrial and residential uses for the community, including lifestyle housing. Within a few years, the City will in all practical respects be fully developed. The more highly populated areas of the Town consists of residential developments and extensions of the urban areas of the City along the shores of the lake of Forest Lake and Clear Lake. The commercial area of the Town is an extension of a commercial area of the City along Highway 61 and includes an airport site. Although 12,000 acres of the Town are designated as vacant or agricultural, there are only four or five commercial farms remaining in the Town and the "rural" areas have numerous, scattered, large lot residential uses.

Because the City and some areas of the Town are within a single urban area as designated by the Metropolitan Council, there will be no significant adverse effect on the Town as a result of the annexation that would not also occur as a result of the separate incorporation of the Town, or the Town remaining as it is and encouraging urban development. Annexation will ensure that development occurs through an orderly extension of municipal services from the developed City to the developing Town, as contemplated by the Metropolitan Council *Regional Blueprint*.

The Town has expressed concern that the City would change land uses in the Town and limit some "rural" uses such as horse raising or hunting. However, the City has not interfered with "rural" uses in the recently annexed northwest area of the City. The record indicates that the City would accept existing land uses and zoning with any changes to be determined by the entire community. Moreover, the 1997 merger study committee concluded that zoning ordinances in the Town and City could continue to be applied post-merger.<sup>311</sup> Accordingly, this Order creates a zoning "freeze" at the time of annexation.

**(e) Present transportation network and potential transportation issues, including proposed highway development.**

The confluence of such major road systems as Interstate Highway 35, U.S. Highway 8, State Highway 97 and State Highway 61 in the community, the access that the road systems give to the entire metropolitan area and the substantial increase in population forecasted for the metropolitan area, are all factors which will lead inevitably to increased residential and commercial development in the community. The road systems of the Town and City are presently interconnected. Merger of the municipal entities will allow the community as a whole to plan for safe and efficient street and road systems that will benefit the entire area. Incorporation would perpetuate the maintenance of community thoroughfares by different government entities.

**(f) Land use controls and planning presently being utilized in the annexing municipality and the subject area, including comprehensive plans for development in the area and plans and policies of the metropolitan**

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<sup>311</sup> Finding of Fact No. 51.



**council, and whether there are inconsistencies between proposed development and existing land use controls and the reasons therefore.**

Being within the metropolitan area, both the Town and City must prepare and have prepared comprehensive plans which are subject to review by the Metropolitan Council. The Town has prepared a second generation comprehensive plan which was accepted by the Metropolitan Council in 1999. At the direction of the Metropolitan Council the plan contains no elements which would prevent a merger of the Town and City. The City has completed its second generation comprehensive plan and has submitted it to the Metropolitan Council. The Town has under consideration a residential development which, if approved as proposed, will require an amendment of its comprehensive plan and rezoning of designated commercial/industrial property to residential property. Whether the Town remains as a Town, is incorporated as a separate entity or is merged with the City of Forest Lake, the inconsistency with the presently accepted comprehensive plan will need to be resolved.

As a part of their comprehensive planning, both the City and Town are required by statute to prepare and have prepared and adopted zoning, subdivision and other land use control ordinances. The land use controls adopted by the City and Town, in general, follow the Metropolitan *Regional Blueprint* in designating the City and the adjacent part of the Town as urban and much of the remainder of the Town as urban reserve. Land use controls adopted in a consolidated community will continue to follow regional guidelines. Much of the Town will continue to have large lot residential uses and agricultural uses through the year 2020 and beyond. Land use controls will permit urban development to occur as an orderly expansion of and from the present City.

Both the Town and the City has been diligent in planning for growth. Both have been cognizant of Metropolitan Council guidelines and policies. However, the record indicates that the combined community would benefit from one comprehensive plan with uniform zoning and subdivision ordinances to guide its development in a logical and consistent manner.

**(g) Existing levels of governmental services being provided in the annexing municipality and 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 said services.**

The City has a fully staffed and equipped community oriented police department. At the expense of the School District, the City police department provides school liaison officers to the district. The City provides police service to the Town on a requested, per call basis. The police department is required to furnish police services to the community's intensively developed residential and commercial/industrial areas located within the city.

The Town provides seventy hours per week of police coverage for its 8000 citizens by contract with the Washington County Sheriff's Department. In 1998, the

Town spent \$9.00 per capita for police protection while the City spent \$168.00 per capita for police services. Even though the City's per capita costs reflects its more intensive development, the location of several schools within the City, its role as a center for commercial activity for a large surrounding area and its role as a center for recreational facilities and activities, such a great disparity in the amounts spent for police service is remarkable. The Sheriff of Washington County indicated that 24-hour police protection for the Town would mathematically require approximately 5.2 police officers. Annexation of the Town to the City will provide the Town with 24-hour police coverage.

The City has complete municipal water and sewer systems. In 1995 it prepared an updated water supply plan which was further supplemented by a 1999 water systems update. The plan covers the City's water needs for the build-out of the current City and providing for the upgrade of the water system over the next twenty years. In connection with the improvements to its water system, the City prepared a financing package of approximately \$4,500,000, including a bond issue of \$3,700,000. The bond issue is to be repaid by a slight increase in water rates, costing an average consumer approximately \$10.00 to \$12.00 per year.

The City's water supply is softened and treated. In 1994 the City drilled a new well into the Simon-Hinckley Aquifer and constructed a new water treatment plant with a clear well reservoir having storage capacity of 350,000 gallons. As a part of its 1999 upgrade, the City is drilling another well into the Simon-Hinckley Aquifer and constructing a replacement treatment plant for one presently existing at the City Hall site. Upon completion of these projects the City will have three wells in use with a combined capacity of 3100 gallons per minute, two treatment plants with a capacity of 2400 gallons per minute and in excess of 1,000,000 gallons of storage capacity. The well and treatment plant put on line in 1995 are adjacent to Highway 97 and across the street from Forest Lake Senior High School and the junior high school presently under construction. The City presently furnishes water to the senior high school and has the ability with its present capacity to supply fully treated and softened water to the new junior high school, the Southview development and a proposed new 250 unit residential housing development.

After the dismissal by agreement of the prior Town incorporation petition and resident annexation petition in April of 1998 and while merger discussions were ongoing between the Town Board and City Council, the Town purchased a private glacial drift well serving the Southview development and constructed a water tower with a capacity of 500,000 gallons, that is scheduled to be on line this summer. The water from the well has an elevated level of manganese.

In order to finance its water system, the Town Board issued general obligation revenue bonds in the sum of \$1,755,000. The Town's financial adviser, Ehlers & Associates, Inc., prepared a memo<sup>312</sup> stating that the bonds were to be paid from growth-area charges and connection charges. The plan required sixty units of growth in

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<sup>312</sup> Ex. 72.

the year 2000 and seventy-eight units annually thereafter. The memo further stated that "the plan cannot accommodate significant variance in basic assumptions."

The Town is now in the position of needing to encourage residential and commercial growth. It must accommodate the 250 unit development near Southview and is encouraging a 450 unit development in an area west of the airport property which will require a comprehensive plan amendment changing designated commercial industrial property to residential property. In addition to the comprehensive plan amendment, the Town will need to extend the trunk sewer and water lines to the proposed developments. A water treatment plant may be required. In order to construct needed additional water system improvements, the Town will need to raise additional capital.

In contrast, in a combined entity, the City will be able to satisfy the immediate needs of the Town with less capital being required. As further development occurs, the City Council of the combined entity will be permitted to take a more considered approach to development demands. The financial resources of the entire community will be available for infrastructure additions.

The Town has a municipal trunk sewer system that services areas near to the lake of Forest Lake and near to Clear Lake. The City's trunk sewer system serves the entire developed area of the City. The outflow for both systems is the Forest Lake Interceptor and treatment is by the Metropolitan Waste Water Treatment Plant in St. Paul. Expansion of the systems may be accomplished without the necessity of interconnection. Given that the soil of the Township is not suitable for septic systems, development of the Town means that municipal sewer service is necessary.

The Town presently has a fire rating of 7 and the City has a fire rating of 5. Fire service is provided under a joint powers agreement between the City, the Town and two other municipal entities. The immediate effect of annexation of the Town to the City will be the combining of the Town and City's portion of the costs of maintaining the joint fire department. Merging of the two municipal entities will also eliminate any controversy between them as to the method of calculating each entity's share of the costs. There will be no immediate effect on the fire rating except that areas in the present Town that receive municipal water and sewer services may have a reduced rating because of its increased water supply.

In a combined community the administrative departments will be combined in one location. Personnel needs will be determined by the new City Council. Likewise, the budgets and other financial information will be combined in one bookkeeping system.

The public works departments will be combined at one facility. The public works personnel and equipment of both entities will be required to maintain the community's streets, roads, sewer and water systems. The equipment may be used area-wide in the community and may postpone certain replacement requirements. The jet-vac purchased by the present City will be available to service the sewer system of the Town.

Merger of the entities will enable the community to better plan for recreational facilities and allow the larger community to consider such amenities as a community center, hockey arena or other enhanced facilities that most likely could not be accommodated by one of the municipalities acting alone.

**(h) Existing or potential environmental problems and whether the proposed action is likely to improve or resolve these problems.**

There are no environmental problems in the present Town or present City which cannot be resolved with the present forms of government. However, one larger City would provide greater resources to deal with any potential problems involving, for example, the lakes in the community.

**(i) Plans and programs by the annexing municipality for providing needed governmental services to the subject area.**

A major objection of the Town Board to the petition of town residents for annexation to the City is the lack of plans by the City for providing needed government services to the area to be annexed. This argument would be more persuasive if only a part of the Town were being annexed to the City. The current proceeding closely resembles a consolidation of two entire municipal entities.

Although Minn. Stat. § 414.041 applies to the consolidation of two cities, it is instructive in what it does and does not require the decisionmaker to consider in arriving at a consolidation decision. Minn. Stat. § 414.041, subd. 5, which governs consolidation, requires the decisionmaker to consider the municipal incorporation factors contained in Minn. Stat. § 414.02, subd. 3. Omitted from that section is a requirement that the Municipal Board consider plans and programs by one municipality to provide needed governmental services to the other, even though a consolidation of two cities is being addressed.

The present proceeding is similar in that it involves the consolidation of a fully functioning urban town and a fully functioning city. The Town has an administrative department, a public works department, a sewer system, a water system, police services, a comprehensive plan and zoning and subdivision ordinances governing land use. Those same services and plans will be provided by the City Council of the combined entity.

The record does provide information about what will happen if annexation occurs. Instead of seventy hours of police service per week, the City Council will provide twenty-four police protection to the entire community by adding such personnel and equipment as it deems appropriate. Fire services will continue to be furnished as they presently are.

In general, land use regulations and the comprehensive planning for the Town area will not be significantly changed. The expanded City will be able to utilize the Town's planning documents. Over a period of time, the comprehensive plan for the community will be amended to provide community-wide application. Zoning and

subdivision ordinances will be redrafted to provide uniform terminology. Modified land use districts will be established, in particular, to protect and enhance the more non-urban areas of the Town and to restrict haphazard development in the urban areas of the Town.

The City Council of the consolidated community will extend water service to the developing areas of the Town in a manner which complies with the Metropolitan Council Regional Blueprint and which provides a user base to pay the cost of the required infrastructure. The City Council will combine the administrative and public works departments of the two entities. The relatively small size of the departments and the amount of equipment involved should permit the merger of the departments without significant difficulty. Non-union employees may simply be added to union groups. However, the employees themselves will have the statutory authority to decide whether they continue as a union group or not.

While the annexation is being implemented, services can continue to be furnished to the residents of the community without interruption. Streets and roads will be plowed and maintained and police and fire services will be provided. Administrative functions can be accomplished, building inspections will be made and engineering services will be provided. Consolidation of the bookkeeping system will require more urgency but can be accomplished with the aid of consultants. The Town has expressed concern that developers who have arrived at agreements with the Town will be impacted detrimentally. There is no reason to believe, however, that the City would not be bound by any agreements arrived at by the Town.

The City has recently demonstrated its ability to plan for an annexed area and deliver services to it in its annexation of the 840-acre parcel of the Town in 1993. The City Council authorized the development of a comprehensive plan for the area. The wishes of the residents were given full consideration in face to face and group meetings. A land use ordinance was adopted allowing development of commercial areas and small lot residential development, while at the same time protecting large lot residential and agricultural uses, including continued hunting rights and the ability to maintain large animals in appropriate areas. Sewer and water services have been furnished to the commercial area and to the residential areas of the annexed property both in developments having failing septic systems and a new residential plat. Twenty-four hour police service was provided to the entire area upon annexation.

**(j) Fiscal impact on the annexing municipality, the subject area, the adjacent units of local government, including net tax capacity and the present bonded indebtedness, and the local tax rates of the county, school district, and township.**

At the present time the Town and City have appropriate fund balances in their various municipal funds. The Town, however, requires sixty units of growth in the year 2000 and seventy-eight units of growth thereafter to pay its 1999 bond issue. Merger of the municipal entities will make available the full faith and credit of the taxing authority of

the entire community. A proposed, combined budget<sup>313</sup> concluded that a home having a value of \$130,000 in the present Town would have a City real estate tax increase of \$123.00 per annum over the pre-combination taxes.

The proposed combined budget factored in additional police service. At the present time the Town is paying \$9.00 per capita for police protection and the City is paying \$168.00 per capita for police services, a difference of \$159.00. Arguably, City residents are paying more than their fair share for police services rendered to the community because they are bearing the costs of police protection for the community's schools, the community's recreational areas, the community's lifestyle housing and the community's commercial and industrial districts. The present Town area will benefit from increased police protection by way of additional personnel and equipment, faster response to police calls and ongoing access to community based police programs.

The Town area also will benefit by the immediate availability of fully treated and softened water, thereby lessening to some extent the capital requirements necessary to develop a new water system. The Town area will receive the benefits in a combined community of economic development tools, such as tax increment financing and an economic development authority. The combined community will receive an increase in state aid road funds initially estimated to be \$280,000 per year. Economic efficiencies can be expected from the combination of the administrative and public works departments of the two entities.

While there may be a short term increase in City real estate taxes for Town residents, they will receive enhanced City services. City residents will assume the risk that the Town's new sewer and water systems lack sufficient revenue to pay the Town's bonded indebtedness. The Town has suggested that annexation will produce a "windfall" for the City. However, there is no showing that City revenues would increase while expenditures would not. Rather, the City will have to assume the present Town expenditures and the relationship between revenues and expenditures will remain as it is at present, at least in the short term.

**(k) Relationship and effect of the proposed action on affected and adjacent school districts and communities.**

The City and Town are both within School District No. 831. A combination of the two entities or the separate annexation of the School District's property to the City will enable the school system to obtain treated and softened water from a "state-of-the-art" water treatment facility immediately adjacent to the school property. The supply of water will be more reliable in that the School District will not need to be concerned with such system problems as the potential for water freezing and water stagnation in the Town's water storage tower. Ongoing maintenance expenses may be lessened because the School District will avoid the problems caused by manganese, iron or other elements in the water supply.

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<sup>313</sup> Ex. 140.

The new junior high school and Forest Lake Senior High School will have available to it all of the resources of the City police department, including twenty-four hour police protection.

The Town has committed itself to furnishing trunk sewer line to the easterly edge of Columbus Township. The combined City will be required to honor that commitment. The combined entity will continue to share a drainage system with Chisago County and will continue to be a part of the Rice Creek Watershed District and the Comfort Lake-Forest Lake Watershed District. There will be no other significant effects on adjoining communities.

**(l) Adequacy of town government to deliver services to the subject area.**

The Town has made a persuasive case that it is becoming urban and has need of municipal services to continue its development. The Town does not receive state aid road funds and it will not, under present law, have the benefit of tax increment financing or an economic development authority to aid in future development. Its comprehensive planning and its zoning and subdivision ordinances and activities are subject to Washington County review. The Town, at present, continues to be subject to potential annexations of its property by adjoining cities. It would also receive these benefits by a separate incorporation but incorporation would be to the detriment of the City of Forest Lake and the full Forest Lake community.

**(m) Whether necessary governmental services can best be provided through the proposed action or another type of boundary adjustment.**

Necessary government services can best be provided by annexation of the Town to the City. The City and Town make up the Forest Lake community. The City has completely developed municipal services including its police department and its water and sewer systems. It has the area's supply of lifestyle housing in conformance with the requirements of the Livable Communities Act. It is the retail business and commercial/industrial center of the community. The City, however, has only a limited amount of acreage available for future development within its present City limits. Because of its location within commuting distance of the St. Paul-Minneapolis metropolitan area and its interconnecting transportation system and the amenities it offers, significant residential and commercial development will occur.

The Metropolitan Council, through its *Regional Blueprint*, designates the City of Forest Lake and adjacent areas within the Town as a single urban area in which future growth will inevitably occur. In accord with Metropolitan Council guidelines, growth should occur by gradual extension of sewer and water infrastructure from the already developed City to immediately adjacent urbanizing areas in an orderly fashion.

The growth can be planned and controlled more efficiently by the Forest Lake community and not by the competing boards of individual entities within the community. One community should not have two police departments, two planning departments,

two administrative departments, two utility systems, two engineering firms, two planning firms, nor two governing bodies.

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

The entire Town should be annexed to the City. The population of the Town is now approximately 8000 persons. It cannot be considered to be rural. Nearly all of the Town has urban or urban reserve designations in the Metropolitan Council *Regional Blueprint*. At the present time the Town has only four or five commercial farms and by the year 2020 only about 4000 acres are projected to have a long-term agricultural designation. It is bounded by the City of Hugo on its south side. The Town has a developing airport. It has a new 18 hole golf course in its urban reserve area.

## **Statutory Factors – School District**

Of the fourteen factors which must be considered under Minnesota Statutes, § 414.031, subd. 4, when determining whether or not an annexation petition should be granted or denied, the following seven factors are of primary relevance to the School District petition. The other factors are discussed adequately above.

**(b) Quantity of land within the subject area and adjacent units of local government; and natural terrain including recognizable physical features, general topography, major watersheds, soil conditions and such natural features as rivers, lakes and major bluffs.**

The parties have stipulated that the City is 2,658 acres in size and that the Township is 19,970 acres in size. The annexation of the School District property would increase the City's total acreage by approximately 4% and would reduce the Township's total acreage by approximately .66%, or less than 1%. In other words, the quantity of the land in question is small. The natural terrain of the School District property is unremarkable in that it is generally level and contains no recognizable features that present a natural boundary with the City or that would interfere with the proposed annexation. Accordingly, the consideration of this statutory factor reveals no facts that argue against the annexation of the School District property.

**(c) Degree of contiguity of the boundaries between the annexing municipality and the subject area.**

This factor examines the extent of the existing boundary connection between the Township's School District property and the City to determine whether the degree of contiguity is compatible with the School District's request for annexation. The record shows that the School District's land borders the City continuously for approximately one-half mile along the School District's northern boundary. This boundary expanse is able to support a smooth transition of the provision of necessary City services to the



School District land. There has been no showing that orderly growth or development would be impacted adversely or impeded by this factor or that this factor pinpoints any substantial concerns.

**(e) The present transportation network and potential transportation issues, including proposed highway development.**

This factor considers whether the present transportation network, potential transportation issues, or proposed development would be adversely impacted by the proposed annexation of the School District's property.

The record shows that the proposed annexation, if granted, would establish new municipal boundaries. To the extent that 210<sup>th</sup> Street borders the School District's land on the south side, it would become the new border between the City and the Township. Goodview Avenue, running north between 210<sup>th</sup> Street and TH 97, would remain a Township road between 210<sup>th</sup> Street and the southern edge of the new junior high school property and would become a City road from the southern edge of the new junior high school property to TH 97.

To the west, TH 61 borders the School District's land. Both TH 97 and TH 61 are under the jurisdiction of the Minnesota Department of Transportation (MnDOT). The record shows that MnDOT has no current transportation projects underway for these arteries and that none are envisioned for the foreseeable future.<sup>314</sup>

The Township has been planning to make improvements to Goodview Avenue. A preliminary report on the Goodview Avenue project, prepared by Bonestroo, the Township's consultant, shows that it is in the planning stage, that bids have not been solicited and that a construction contract has not been awarded.<sup>315</sup> The preliminary report was prepared in October and revised in November of 1999, approximately seven months after the School District filed its Petition in this matter.

As of the close of the record, the Township proposed to solicit bids in February and to award a contract in March of 2000. The Township's bond consultant, Rusty Fifield, has acknowledged, however, that the Township might not be able to sell bonds to fund the Goodview project until the annexation issue/legal dispute with the City is resolved.<sup>316</sup>

The record shows that Goodview Avenue, as it exists currently, is able to serve the adjacent properties, namely, the School District's administrative building, the senior high school and the new junior high school. The only other property along this stretch of Goodview Avenue is the Ruhr property, which Rick Murray proposes to develop. The Ruhr property will be served by an extension from 210<sup>th</sup> Street, continuing onto the Ruhr land. No persuasive evidence has been presented to support a conclusion that the grant of the School District's annexation request would cause immediate and/or critical

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<sup>314</sup> Ex. 226, p. 18.

<sup>315</sup> Ex. 226.

<sup>316</sup> T. 1955-1956.

transportation issues or safety concerns with regard to any potential delays in the Goodview Avenue project.

The evidence presented shows that, historically, the City and the Township have been able to resolve issues relating to Eleventh Avenue, a street that functions as a boundary, by agreement and inter-municipal coordination. The record also shows that the Township has the capability to continue to work with the City on issues of mutual/joint interest, including the coordination and improvement of roadways that are designated as, and/or cross, boundaries.<sup>317</sup> The creation of a new boundary along Goodview Avenue and 210<sup>th</sup> Street will necessitate joint efforts of this sort to address mutual concerns regarding road maintenance and improvements. However, no convincing evidence has been presented of a current or potential transportation issue or problem that would be adversely impacted by the grant of the School District's annexation request.

**(g) Existing levels of governmental services being provided in the annexing municipality and 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 said services.**

This factor examines the existing governmental services provided within the Township and the City and analyzes what impact the proposed annexation of the School District land will have on the delivery of those services. The School District property, if annexed to the City, will have access to a higher level of service in a number of different areas, including water service, fire protection and law enforcement.

#### Water Service

The evidence presented demonstrates that the Township's new water system is just being developed and provides a lesser degree of service than the City's mature, looped system. The City's present water system is fully capable of meeting the domestic and fire protection needs of the new junior high school now under construction, whereas the Township's present system is not able to provide comparable service at present. The record also shows that infrastructure is in place to provide a connection from the City's system to the new junior high school.<sup>318</sup>

Even if the Township's water tower becomes operational in late June of 2000, as planned, the evidence presented supports a conclusion that the City's water system will remain more reliable. The City's mature, looped water main system can circulate and feed water in more than one direction, allowing the City to often maintain adequate and/or uninterrupted flows when and if water mains break or other system failures occur. The record also shows that the City's back-up generators have the capacity to run the system in the event of a power failure. The Township's system, consisting of a

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<sup>317</sup> T. 97, 1118, 1586.

<sup>318</sup> T. 333.

single well, a single pump, and a single, dead-end trunk water main, is incapable of providing the School District with back-up protection in the event of a power failure or other types of service interruptions.

Considerable evidence was presented regarding the issue of manganese in the Township's water supply. The record indicates that the City's water treatment plants effectively remove the vast majority of manganese and iron from its water supply, essentially eliminating the potential of manganese to cause significant damage to School District fixtures, pipe interiors, and other parts, surfaces and equipment. In contrast, the record demonstrates that the Township's water has manganese levels in excess of the federal EPA's secondary standard and that the Township has inadequate mechanisms in place to sequester the manganese reliably. No current plans are underway to build a treatment plant. For these reasons, the record supports a conclusion that reliance upon the Township's water system would put the School District property more at risk than would use of the City system.

#### Law Enforcement Services

The City is able to provide a higher level of urban law enforcement services to the School District property than the Township currently provides. At the hearing, the School District offered testimony from Forest Lake Senior High School's Principal and police liaison officer. Their testimony emphasized the School District's need to ensure a safe environment at its schools, including the paramount need for rapid responses to any emergency calls for assistance that might arise. In particular, the School District noted the potential for a seemingly minor incident on school property to erupt into a large-scale incident, overwhelming the ability of the police liaison officer and school support staff to bring the incident under control in the absence of additional law enforcement assistance. The record shows that under the present Township system, calls for outside assistance have not always been responded to by the Sheriff's office in as timely a manner as desired and that the City's police force has provided reliable service.

A comparison of the two law enforcement services also shows that the City's available law enforcement services are greater than the Township's. The City's police department employs 13 full-time officers and 8 part-time officers and maintains 24-hour, 7 days per week patrol coverage. With the exception of a four-hour period between roughly 3:00 a.m. and 7:00 a.m., there are a minimum of two and, most frequently, three, City officers on patrol within the City's jurisdictional limits at any given time.

In contrast, the Township provides deputy services a total of 70 hours per week under a contractual arrangement with the Washington County Sheriff's office, utilizing two officers (the equivalent of two full-time officers, minus travel time to and from the City of Stillwater).<sup>319</sup> Due to rotating shifts, one of the deputies is often off-duty. A typical 30-day monthly schedule, shows that both officers are on duty on only 9 of the

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<sup>319</sup> T. 1732.

30 days.<sup>320</sup> During the remaining 21 days of the month, the shift times of the single deputy on duty vary, resulting in significant law enforcement service gaps when no dedicated law enforcement is provided exclusively to the Township by the Sheriff's office during hours when the School District facilities are in use.<sup>321</sup>

The record supports the conclusions that the School District property in question would benefit from having an urban level of law enforcement services, that the City is fully capable of providing such services, and that the Township lacks the current capacity to provide an urban level of services.

**(i) Plans and programs by the annexing municipality for providing needed governmental services to the subject area.**

The record supports the conclusion that the City's current land use regulations, law enforcement system, and utility services (water and sewer) can meet the present needs of the School District's land and facilities.<sup>322</sup> The evidence presented also demonstrates that the City can provide the area with needed street maintenance.<sup>323</sup> With regard to park and recreation programming, the record supports a conclusion that annexation of the School District property will benefit the community at large by ensuring the inclusion of the School District's facilities and land in the City's comprehensive community-wide park and recreation program.<sup>324</sup>

The School District's property is currently hooked into the metropolitan sanitary sewer interceptor lines operated by the Township. The record shows that the City's sanitary sewer system has the present capacity to service the School District's facilities.<sup>325</sup>

**(j) Fiscal impact on the annexing municipality, the subject area, the adjacent units of local government, including net tax capacity and the present bonded indebtedness, and the local tax rates of the county, school district, and township.**

The annexation of the School District property, which is tax-exempt, would have no impact on the Township's ad valorem taxes, tax capacities and tax rates, and would not increase the level of bonded indebtedness of the Township. Based on the evidence presented, the only possible economic impact is with regard to the \$47,000 water service connection fee to the new junior high school that the Township has required the School District to pay in order to receive temporary service for construction purposes. If the School District property becomes annexed to the City, the Township would not retain those funds. The \$47,000 connection charge is part of the Township's anticipated revenue stream to repay a \$1.76 million Township bond issue. The record

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<sup>320</sup> Ex. 66.

<sup>321</sup> Exs. 66, 71, T. 1732, 1763-1764.

<sup>322</sup> T. 806-808.

<sup>323</sup> T. 811-812.

<sup>324</sup> T. 816.

<sup>325</sup> T. 921.

supports a conclusion that the loss of the \$47,000 connection charge would not present an undue financial hardship for the Township. Both Alan Borsheim and Township Board member Chris Taylor stated that the Township would be able to repay the bonds even if the School District's land is annexed to the City and the School District does not pay the connection charge.<sup>326</sup>

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

The Township contends that its water system will not function properly with the loss of the School District property and that it will experience systemic problems in the water tower, including freezing, slow turnover rates and inability to maintain freshness. It does not appear that the proposed annexation will prevent or interfere with the orderly extension of the Township's water mains. There also has been no showing that the loss of the School District property will result in other systemic operational problems.

Each of the Township's two current proposals for residential development, the Ruhr and Brugemann developments, will require an extension of the Township's water main. With regard to the issues raised pertaining to the water tower, the record supports a conclusion that the Township may benefit by the grant of the School District's petition. Kurt Johnson testified that water in the Township's tower should turn over approximately every two days. The evidence presented shows that if the Township provides water to the new school, the turnover rate in the water tower would slow down to every 7.5 days to 15 days as the result of the high fire protection needs of the school and the Township's low household water needs (based on the lack of users in the Township). A slow turnover rate would negatively impact the quality and freshness of the water. If the City provides the junior high school with water, the Township will be able to maintain lower residential water levels in its water tower, thereby increasing the rapidity of the water turnover rate and enhancing the freshness of the water.<sup>327</sup>

The Township also has expressed concern that delays will occur in its proposed timetable for a Goodview Avenue street improvement project if the City and the Township must agree on coordination. The record supports a conclusion that this project can be delayed without causing undue hardship to the Township, the City or the School District. Cars, trucks and buses are able to navigate through the area in its present condition. The work on Goodview Avenue was scheduled initially to be done in conjunction with MnDOT's plan to work on the intersection of Goodview Avenue and TH 97. MnDOT has decided not to proceed with this project<sup>328</sup>, however, thereby reducing or eliminating the need for coordination.

The Township also contends it will experience undue hardship based upon the loss of revenue from the daily consumption of water by the new school. The record

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<sup>326</sup> T. 1430-1431, 1151, 1153-1154.

<sup>327</sup> T. 1433-1435.

<sup>328</sup> T. 1448.

makes clear, however, that the financing plan prepared for the Township by Ehlers did not envision use of operational revenues to repay bonds.<sup>329</sup>

## **Legislative Intent**

In a sense, both the resident petitioners and the Town Board of the Town are seeking the incorporation of the Town - the residents by annexation of the Town to the City, and the Town Board by incorporation of the Town as a separate city. The legislative policy governing annexation and incorporation is stated in Minn. Stat. § 414.01, subd. 1 as follows:

Subdivision 1. Purpose. The Minnesota municipal board is hereby created to conduct proceedings, make determinations and issue orders for the creation of a municipality, the combination of two or more governmental units, or the alteration of a municipal boundary.

The legislature finds that: (1) sound urban development and preservation of agricultural land and open spaces through land use planning is essential to the continued economic growth of this state; (2) municipal government most efficiently provides governmental services in areas intensively developed for residential, commercial, industrial, and governmental purposes; and township government most efficiently provides governmental services in areas used or developed for agricultural, open space, and rural residential purposes; (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 existing municipalities of unincorporated areas unable to supply municipal services should be facilitated; and, (5) the consolidation of municipalities should be encouraged. The Minnesota municipal board is empowered to promote and regulate development of municipalities to provide for the extension of municipal government to areas which are developed or are in the process of being developed for intensive use for residential, commercial, industrial, institutional, and governmental purposes or are needed for such purposes; and to protect the stability of unincorporated areas which are used or developed for agricultural, open space, and rural residential purposes and are not presently needed for more intensive uses; and to protect the integrity of land use planning in municipalities and unincorporated areas so that the public interest in efficient local government will be properly recognized and served.

Each case brought under Chapter 414 must be guided by the legislative intent set out in this statute. While the statute acknowledges the appropriate respective roles

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<sup>329</sup> Ex. 72.

of cities and townships, the statutory policy as applied to the facts in this record seems to point towards annexation of property in need of municipal services to the existing municipality over the creation of a new city. The statute states that annexation should be facilitated and that consolidation of municipalities should be encouraged.

This interpretation was advanced by the Minnesota Supreme Court in the case of *Village of Farmington vs. Minnesota Municipal Commission*.<sup>330</sup>

[Chapter 414] was designed to eliminate many of the difficulties which had arisen under prior statutes governing municipal incorporation and annexation by delegating to the commission, as a state-wide administrative agency, broad powers to facilitate the orderly growth of Minnesota municipalities by ending the uncontrolled proliferation of small suburban municipalities in the metropolitan area and resolving the conflicting claims of existing municipalities seeking to enlarge their boundaries.... As we interpret this provision, it manifests a strong legislative preference for annexation of incorporated areas (Emphasis added).

Legislative interest in consolidation is further emphasized in Minn. Stat. § 465.81 to § 465.87, which establishes procedures under the Minnesota Board of Government Innovation and Cooperation to be used by different forms of municipalities to merge into a single unit of government. The Board can also provide funds to aid in that process.

The legislature has given the Metropolitan Council planning responsibilities in the seven county metropolitan area. The Council's *Regional Blueprint*, a comprehensive guide for the metropolitan area, adopted by the Metropolitan Council in December 1996 identifies the City of Forest Lake and a portion of adjacent areas of Forest Lake Township as part of a single, metropolitan, urban area. The remainder of the Town is designated as urban reserve, except for two small areas in the north and southeast corners of the Town which are designated as permanent rural.

The *Regional Blueprint* defines the term "urban area" in the metropolitan context, as that portion of the region served with regional sewer and urban-level transportation services. It is expected to develop at urban and suburban residential densities averaging three dwelling units per acre or greater with corresponding commercial, industrial and public uses consistent with locally approved comprehensive plans. An urban area is the area within the Metropolitan Urban Service Area. "Urban reserve" is that area identified as land in the metropolitan region needed for possible urbanization to accommodate regional growth forecasts through the year 2040. Until it is needed for urbanization, such land is to be continued in agricultural uses or low density rural residential use. Land designated as permanent rural is land planned to stay in rural use through the year 2040.<sup>331</sup>

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<sup>330</sup> 284 Minn. 125, 170 N.W. 2d 197 (1969).

<sup>331</sup> Exhibit 134b.

James Uttley, a planner for the Metropolitan Council stated that, in the metropolitan planning context, incorporating the Town in a manner so that it would surround the City on three sides was an inappropriate way of developing municipal services and municipal entities.

## **Conclusions**

### **Incorporation of the Town of Forest Lake as a City should be denied.**

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.<sup>332</sup>

All parties except for Mr. Knaak agree that the Township is about to become urban, and that the Township form of government is not adequate. The question is whether incorporation would be in the best interests of the Township area or whether it would be better served by annexation.

The Board of Forest Lake Township filed its petition for incorporation to: protect its boundaries by eliminating the ability of adjacent municipalities to annex Town property; make available to the Town state aid road funds; eliminate uncertainty as to how ongoing developments will occur; and eliminate the coordination and duplication of planning and zoning authority with Washington County. The Town asserts that it meets the statutory criteria for incorporation in that it is urban or suburban or about to become so.

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<sup>332</sup> Minn. Stat. § 414.02, subd. 3.



The Town resident petitioners and the City agree that the Town is urban or suburban or about to become so, but they argue that "incorporation" should be accomplished by the merging of the Town with the City. Annexation will accomplish most of the goals of the Town. Its boundaries will be protected, at least from annexation by a separate city, by its combination with the City. There will be an increase of state aid road funds to the combined community initially of \$280,000. The Town will no longer be under the jurisdiction of the Washington County Planning Authority. The municipal governments of the community will be united and the ongoing and very costly disputes which have taken place between the Town Board and the City Council over the past many years will come to an end.

This record does not support the conclusion that the proposed incorporation would be in the best interests of the area under consideration, namely the Town. The people of the Township have always had a close and cooperative relationship to the people and resources of the City.<sup>333</sup> While the City has been carved out from the Town by various municipal actions over a period of a century, the community of Forest Lake has not been so divided. The community looks to the City for its shopping, its churches, its schools, its industry, its stock of lifestyle housing and its entertainment.

Services can be furnished most efficiently by merging the municipal entities rather than creating a new city surrounding in great part an existing city in the same community. Incorporation would not provide better service for the residents of the Town because it would continue unnecessary duplication of services and foster unproductive competition between two parts of what is in reality one community. It would mean that planning would continue to be less coordinated and less beneficial than it might be and that services such as water, sewer, police and fire could potentially continue in one city without consideration of what happens in the other city.

Other decisionmakers have tended to view incorporation of the Township in a similar fashion. The Minnesota Municipal Board, in its 1991 decision in proceeding I-56, concluded that incorporation is not in the best interests of the Town of Forest Lake or the City of Forest Lake. The Minnesota Court of Appeals agreed. In 1998, the Metropolitan Council took the position that at least the area within the metropolitan urban service area should be annexed to the City of Forest Lake.

OGFL argued in its post-hearing memorandum that the Township is absolutely barred by the doctrine of *res judicata* from being incorporated in this proceeding. It points out that the Minnesota Municipal Board has previously denied incorporation petitions submitted by the Town in 1971 and 1990. The latter decision was affirmed by the Court of Appeals.<sup>334</sup> The Board did find that incorporation would not serve the best interests of the Town or City. OGFL points out that *res judicata*, a doctrine that bars relitigation of decided cases, has been applied to quasi-judicial agency decisions.<sup>335</sup>

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<sup>333</sup> See, e.g., Findings of Fact Nos. 194-95.

<sup>334</sup> Town of Forest Lake v. Minnesota Municipal Board, 497 N.W. 2d 289 (Minn. Ct. App. 1993) rev. denied.

<sup>335</sup> Surf and Sand, Inc. v. Gardebring, 457 N.W. 2d 782, 787 (Minn. Ct. App. 1990).

The Township argues, however, that the issues and facts in this case are not the same as they were in 1990, since the town has purchased an airport, revised its comprehensive plan and now has its own water system. Furthermore, *res judicata* should not be rigidly applied to administrative proceedings,<sup>336</sup> especially where the statute envisions that a party may petition for relief more than once.<sup>337</sup> In this case, the statute appears to allow a township to petition for incorporation at any time. There is no indication that the legislature intended that once a petition for incorporation is denied that it could never be brought again. Factors such as population, commercial development and housing development can change greatly over time.

**Annexation of the Town of Forest Lake to the City of Forest Lake should be approved.**

The annexation statute provides as follows after listing the factors to be considered:

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 residents of the property or (b) if the remainder of the township would suffer undue hardship.<sup>338</sup>

The parties (except for Mr. Knaak) are in agreement that the Township is about to become urban and that municipal government is required for the Township. The question is whether annexation by the City is in the best interest of the Township.

As the Findings of Fact and the prior discussion indicates, while there are some factors that support either incorporation or annexation, the record as a whole supports a conclusion that annexation would provide a greater benefit to the residents of the Township. One city of 15,000 residents will fare better in its relationships with Washington County, the Metropolitan Council and the State. It would likely be the fourth largest city in Washington County. The residents will receive the benefits of coordinated planning and community-wide cooperation and avoid the disadvantages of competition and conflict. The record indicates potential competition or conflict between the Town

<sup>336</sup> *Souden v. Hopkins Motor Sales*, 182 N.W. 2d 668 (Minn. 1971).

<sup>337</sup> *Wangen v. Comm. of Public Safety*, 437 N.W. 2d, 120, 123 (Minn. Ct. App. 1989).

<sup>338</sup> Minn. Stat. § 414.031, subd. 4.

and the City over schools, a service center, planning, highways, and commercial and industrial development. The City has a well-equipped professional police department that is involved in many community activities<sup>339</sup> and that is capable of providing comprehensive police services to the Township. The City has demonstrated its ability to provide water, sewer and street maintenance services and the record shows that the combined efforts of both entities will be compatible and successful. Annexation will create a stronger fiscal base for the entire community and should allow for city employees to provide services more efficiently. The Township would not feel compelled to add services or systems already present in the City, possibly at the expense of the taxpayers.

The evidence also indicates that the increase in revenues for the City would bear a reasonable relationship to the monetary value of the benefits conferred upon the Town. The Findings set out the benefits to be received by Town residents in the areas of police protection, street maintenance and water and sewer service. The property tax estimate was that property taxes in the present town area would increase in a unified City. However, the increase cannot fairly be labeled unreasonable in light of the proposed increase in the level of municipal services – services that development in most areas of the Township will require.

Another advantage of annexation is finally putting the question of how the community is to be governed, and the attendant costs, to rest. The City and Town have been wrestling with merger/annexation issues for at least the past thirty years. In the last decade alone, the Town has filed four petitions for incorporation and Town residents have filed two petitions for annexation of the entire Town to the City. Prior to 1990, the City annexed two parcels on its west side which have become industrial and commercial parks. In 1993, the City annexed 840 acres of additional land between its westerly boundary and the easterly boundary of Anoka County. In 1994, an additional 34-acre parcel was annexed which has been developed into a town home development.

In the last decade, the City and Town have been involved in a number of processes to study the potential merger of the two municipal entities. In 1992, the University of Minnesota Humphrey Institute prepared a report called *Coming Into Focus, a Community Analysis for the City and Town of Forest Lake*. In 1995, an extensive study process was undertaken involving substantial community involvement to discuss finance, services, facilities, land use and form of government issues which resulted in a 1997 report called *A Report from the Forest Lake Joint Merger Study*.

In 1998, the City and Town entered into a statutory merger process under the auspices of the Minnesota Board of Government Innovation and Cooperation. Prior to the scheduled hearings on various boundary change petitions, the City and Town were required to hold "meet and confer" sessions. Significant financial expenditures have been incurred in the various processes for attorneys fees, facilitators, planning consultants, financial consultants, engineering consultants and staff time. Clearly, merger or consolidation have been adequately studied.

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<sup>339</sup> Finding of Fact No. 147.

The overall Forest Lake area sees itself predominantly as one community and comprises one urban area under the provisions of the Metropolitan Council *Regional Blueprint*. The residents of the Town presently look to the City for many resources, including shopping, employment, schools, churches, a library, social services, and social activities.<sup>340</sup> Basic comprehensive plans are in place. Basic government services have been established which can be combined in one governing entity. It appears likely that a majority of residents support annexation.<sup>341</sup> Elections will be held in which the residents of the whole community will be permitted to select their representatives. All contractual commitments will be honored. Grant funds in the sum of \$400,000 are available to aid in the consolidation.

Merger of the municipal entities will also formally end the boundary disputes, provide additional state aid road funds and eliminate the duplication of zoning and subdivision requirements between the Town and Washington County.

The legislative policy established in Minn. Stat. Ch. 414, the Metropolitan Council *Regional Blueprint*, the facts and arguments in this record, and the prior decisions of the Minnesota Municipal Board and the appellate courts, all lead to the conclusion that there should be one City in the northwest corner of Washington County.

**The record also supports approval of the School District's petition for annexation of its property to the City of Forest Lake.**

Consideration of the statutory factors in this matter demonstrates: (1) that the School District property is now, or is about to become, urban or suburban in character; (2) that municipal government in the area proposed for annexation is required to protect the public health, safety, and welfare; and, (3) that the annexation would be in the best interest of the School District Property.

The Township, in response to the School District's Requests for Admissions in this matter, admitted in Response to Request for Admission No. 6 that the School District property is now or is about to become urban or suburban in character.<sup>342</sup> The hearing record also supports this conclusion. The School District property, consisting of approximately 133 acres, is situated within the Township's MUSA, adjacent to the City's southern boundary. The testimony of Mr. Uttley, a Metropolitan Council planner, and the exhibits prepared by him, clearly identify the School District's property as urban or suburban in character.

The City's water and law enforcement services are necessary to protect and promote the public health, safety and welfare of the School District and the populace it serves.

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<sup>340</sup> The courts have referred to this as a "unity of interest". Township of Copley v. Village of Webb, 250 Minn. 22, 83 N.W. 2d 788, 795 (1957); Town of White Bear v. City of White Bear Lake, 255 Minn. 28, 95 N.W. 2d, 294, 299 (1959).

<sup>341</sup> Findings of Fact Nos. 199-200.

<sup>342</sup> Ex. 81.

With regard to water service, ample evidence was presented to demonstrate that the City's mature, looped water system provides better service than the Township's single main system. The record demonstrates that the City's water system has the current capacity to provide softened and treated water to the new junior high school, in addition to continuing to provide service to the School District's administrative facilities and the senior high school. The Township's current system lacks the same capacity.

The City's water supply has been shown to be of a higher quality than the Township's with regard to relevant aesthetic characteristics, namely, the levels of manganese in each system's water supply. The high level of manganese in the Township's water and the evidence of the limitations of the Township's present system to effectively sequester manganese, raise legitimate and potentially costly operational concerns for the School District. The fact that the City's water system has a back-up system that can be accessed in the event of a system failure, thereby reducing the likelihood of gaps in service caused by system failures, also demonstrates that the City's present system is significantly more reliable than the Township's present system. The Township has no back-up service available. Analysis of the statutory factors leads to the conclusion that the School District's linkage to the City's system will protect and promote public health, safety and welfare.

With regard to law enforcement services, the Township's present law enforcement system, consisting of a contractual arrangement with the Washington County Sheriff's office for the provision of two, full-time equivalent officers for the entire Township, cannot be equated with the City's urban police force. The City's police department has 13 full-time officers and 8 part-time officers and provides service 24-hours per day, 7 days per week, including a minimum of two patrol officers on duty at any given time of day. It is in the best interest of the School District to have City police service particularly in light of evidence that, due to inevitable scheduling conflicts, significant time frames exist when no dedicated law enforcement is provided exclusively to the Township during hours when the School District facilities are in use. Another concern identified by the School District is its need to ensure the availability of rapid response times, as well as sufficient numbers of officers, particularly in the event of a need to quell a rapidly escalating incident on school property. The City can better address these concerns. Taking all of the statutory factors into consideration, the School District has demonstrated that in order to protect public health, safety and welfare, it would benefit greatly from the higher level of municipal government services that the City's police department has the current capacity to provide. The proposed annexation would be in the best interests of the School District.

The issue of whether the remainder of the Township can continue to carry on the function of government without undue hardship must also be considered in the analysis of the School District's petition. The evidence presented does not support the Township's assertion that it would suffer undue hardship. With regard to the Township's loss of the \$47,000 water connection charge if the junior high school uses the City's water system, the Township has acknowledged that it will be able to repay its bonds even if the School District's land is annexed. As for the argument that the Township would lose revenue from the daily consumption of water which was to be applied to the

repayment of the bonds, the evidence shows that the financing plan prepared for by Ehlers did not contemplate use of operational revenues to repay the bonds.<sup>343</sup>

The Township also argues that the proposed annexation would leave it with unstable borders and would have a detrimental impact on its future planning process. Neither of these assertions finds support in the evidence presented. As argued by the School District in response to the Township's expressed concern about the need to protect its borders, if the interest in the maintenance of existing borders suffices to defeat an annexation petition, the factors in Minn. Stat. § 414.031, subd. 4, would be meaningless. With regard to the argument that the Township's future build-out plans would be unduly harmed by the grant of the annexation, the evidence presented fails to substantiate this assertion. There has been no showing that the Township's ability to plan a comprehensive water system over the next 20 years would be impaired by annexation of the School District's property, or that other Township systems could not be planned, or that plans could not be adjusted to accommodate the annexation.

## **Southeast Area of the Township**

Frederic Knaak sought party status in this case in order to present the concerns of his neighbors in the southeast corner of the Town. They oppose either incorporation or annexation of their area and believe that they should be allowed to join New Scandia Township, their neighbor to the east.<sup>344</sup> The record does indicate that it is unlikely that the City or the Town will soon provide water or sewer to this area. Most of the area is classified "Permanent Rural" by the Metropolitan Council, which means that it is planned to stay rural through 2040.

A decisionmaker in an annexation or incorporation proceeding under Chapter 414 does have the authority to decrease the area to be incorporated or annexed or exclude property that would be better served by another unit of government. However, the record must provide adequate evidentiary support for such action and this record does not. The record does not clearly indicate exactly what area the southeast residents would like excluded and does not show how the Metropolitan Council classifications relate to that area. Nor does the record demonstrate that New Scandia Township is interested in consolidating with the southeast area. The record does identify some alternatives to allow for appropriate treatment of a more rural area within a city, such as a special zoning or taxing district. These alternatives can be pursued within a city.

Since the evidence submitted to support exclusion mainly contains the preferences of some southeast residents, it is concluded that the petitioners have sustained their burden to show that including the area is in the best interest of the residents. It would be more appropriate for the southeast residents to seek the result desired in a subsequent proceeding under Chapter 414 where an adequate record

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<sup>343</sup> Ex. 72.

<sup>344</sup> Findings of Fact Nos. 213-214.

could be made and the position of New Scandia Township could be expressed. It would not be practical to simply remove a few sections of land from the pending petitions without any alternative for that area. The permanent rural areas of the Town would be unable to provide municipal services to its residents as a separate entity. Excluding the southeast area would not pass the statutory test that requires a finding that the remainder of the Township not suffer undue hardship.

## **Summary**

This order grants the petition of the Town residents seeking to annex the entire area of Forest Lake Township to the City of Forest Lake. The Town's petition to incorporate as a separate City is denied. The conclusions also state that the School District separately proved its case that its property should be annexed by the City.

A number of speakers at the public testimony session expressed a desire that the question of the merger of the City and Town be put to vote. That would have occurred if civic leaders had been able to agree on a consolidation plan and a referendum. Unfortunately, that did not happen and this process, that by statute does not allow for a vote, followed. The Town has argued that incorporation of the Township is one avenue to a vote on merger or consolidation. Yet the statutory prerequisites for incorporation have not been proved in this record. Neither is there reason to believe that community leaders would be successful in the future in agreeing to a referendum. The record does show evidence of public sentiment in favor of annexation through polls and recent elections. Yet it also contains the fears of some Town residents that the City will simply take over the Town and impose its will. There will, of course, be a vote after annexation by all residents to elect a new City Council. Significantly, voters in the Town outnumber those in the City and the new City Council will reflect that reality. Additionally, the activism that has supported the incorporation attempts in the past will likely ensure that all interests are heard in a merged community.

It is one thing to order an annexation and another to implement it. Only the people of the Forest Lake community can make one community a reality. The area is blessed not only with beautiful physical surroundings but also with talented and energetic leaders. Both the Town and the City have been well governed. Leadership in other areas such as social services, the school system and community events has been outstanding. Forest Lake is a unique community with great resources and a bright future.

The leadership of a unified community will need to recognize and respect the new diversity within its boundaries. There will be differences of opinion as to the appropriate level of public services, as to the appropriate restrictions on land use, and

as to what level of taxation should be imposed. Those differences can be recognized to some extent through special zoning and taxing districts. But there must also be a willingness to accommodate and compromise so that energy devoted in the past to rivalry can be directed towards building the community.

G.A.B.