

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

In re the Petition of St. Augusta Township  
for Incorporation (City of Neenah, I-65)

In re the Petition for Annexation of  
Unincorporated Adjoining Territory to the  
City of St. Cloud (Schilplin A-6107)

In re the Petition for Annexation of  
Unincorporated Adjoining Territory to the  
City of St. Cloud (St. Cloud, A-6108).

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

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

Michael C. Couri, Esq., Couri and MacArthur Law Office, 705 Central Avenue East, P.O. Box 369, St. Michael, MN 55376, appeared on behalf of St. Augusta Township. Christopher Dietzen, Esq., Larkin, Hoffman, Daly & Lindgren, Ltd., 1500 Norwest Financial Center, 7900 Xerxes Avenue South, Bloomington, Minnesota, 55431-1194, appeared on behalf of the City of St. Cloud. Gordon H. Hansmeier, Esq., 11 Seventh Avenue North, P.O. Box 1433, St. Cloud, Minnesota, 56302, appeared on behalf of Frederick Schilplin. Gerald W. Von Korff, Esq., Rinke Noonan, Ltd., Suite 700, Norwest Center, P.O. Box 1497, St. Cloud, Minnesota 56302-1497, appeared on behalf of RCH Partnership.

**NOTICE**

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

Any party may submit a written request for an amendment of these Findings of Fact, Conclusions of Law and Order within seven days from the date of the mailing of

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

this Order<sup>2</sup>. No request for an amendment, however, shall extend the time of appeal from this Order.

### STATEMENT OF ISSUES

The issue in this proceeding is whether the petitions for annexation and incorporation should be granted or denied based upon the factors set out in statute.<sup>3</sup>

### FINDINGS OF FACT

#### Procedural History

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

2. On January 14, 1999, St. Augusta Township filed a petition for incorporation as the City of Neenah (Petition 1-65) pursuant to Minn. Stat. § 414.02.<sup>4</sup> The petition contained all of the information required by statute, including a description of the territory for incorporation, which is as follows:

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

AND

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

AND, LESS AND EXCEPT

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

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

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

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

<sup>4</sup> St. Augusta Township has subsequently filed a motion to amend the proposed name of the city to the City of Ventura.

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

3. On March 11 and 12, 1999, the former Minnesota Municipal Board ("Board") conducted hearings on Saint Augusta Township's petition for incorporation. The City of St. Cloud and property owner Frederick Schilplin participated as parties in the hearings. At the end of the hearing on March 12, 1999, the Board agreed to hold the record open for the introduction of further evidence. Specifically, the Board anticipated receiving by June 11, 1999, the preliminary report of the St. Cloud Area Joint Planning Board ("Joint Planning Board").<sup>5</sup> The Board Chairman instructed the parties at the close of the March hearing to let the Board know by June 18, 1999 if they would like further hearing time. (Hultgren [mbt vol. II]<sup>6</sup> at 268).

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

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

#### TRACT "F"

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

Beginning at the west quarter corner of said Section 6; thence North 00 degrees 19 minutes 24 seconds East on an assumed bearing along the west line of the Southwest Quarter of the Northwest Quarter of said Section 6, a distance of 880.07 feet to the right-of-way line of Interstate Highway I-94; thence South 89 degrees 40 minutes 28 seconds East, along said right-of-way line 49.93 feet; thence North 00 degrees 19

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<sup>5</sup> The Joint Planning Board was established through an eight-party joint powers agreement between the cities of St. Cloud, St. Joseph, Sartell, Sauk Rapids, and Waite Park, and the counties of Benton, Sherburne and Stearns. The Board is charged with developing a community based comprehensive plan for the district including all unincorporated areas in the three counties. The Minnesota Legislature awarded the Joint Planning Board a \$350,000 grant to carry out its community-based planning. Among other concerns, the Board considered affordable housing, transportation and wastewater treatment issues.

<sup>6</sup> The citation [mbt] refers to the municipal board hearing transcript.

minutes 32 seconds East, along said right-of-way line 97.14 feet; thence northerly and northwesterly 531.38 feet, along said right-of-way line and along a tangential curve concave to the southwest having a radius of 931.47 feet and a central angle of 32 degrees 41 minutes 09 seconds; thence North 49 degrees 42 minutes 02 seconds East, along said right-of-way line 128.53 feet; thence South 77 degrees 00 minutes 26 Seconds East, along said right-of-way line, along said 1408.99 feet; thence South 80 degrees 59 minutes 54 seconds East, along said right-of-way line 671.79 feet; thence North 88 degrees 49 minutes 11 seconds East, along said right-of-way line 655.51 feet; thence South 86 degrees 48 minutes 17 seconds East, along said right-of-way line 501.60 feet; thence South 74 degrees 40 minutes 48 seconds East, along said right-of-way line 313.21 feet; thence South 52 degrees 43 minutes 08 seconds East, along the westerly right-of-way line of Minnesota Trunk Highway 15, a distance of 384.19 feet; thence South 26 degrees 49 minutes 48 seconds East, along the last described right-of-way line 504.54 feet; thence South 03 degrees 08 minutes 44 seconds East, along the last described right-of-way line 242.49 feet; thence South 14 degrees 50 minutes 25 seconds West, along the last described right-of-way line 291.01 feet to the south line of said South Half of the North Half; thence North 86 degrees 54 minutes 27 seconds West, along said south line 1492.81 feet to the northeast corner of said Southwest Quarter; thence South 03 degrees 53 minutes 42 seconds West, along the east line of said Southwest Quarter 2046.15 feet to its intersection with the easterly extension of the center line of an existing ditch; thence North 88 degrees 17 minutes 42 seconds west, along said easterly extension and along said center line 1604.78 feet; thence North 71 degrees 40 minutes 26 seconds West, along said center line 767.21 feet to its intersection with the west line of said Southwest Quarter; thence North 00 degrees 14 minutes 16 seconds East, along the last described west line 1885.56 feet to the point of beginning. Subject to the right-of-way of Stearns County Road 137 and easements of record. Containing 232.52 acres, more or less.

#### TRACT "G"

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

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

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

#### TRACT "H"

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

Beginning at the east quarter corner of said Section 6; thence North 86 degrees 54 minutes 27 seconds West on an assumed bearing along the south line of said Southeast Quarter of the Northeast Quarter 520.01 feet to the easterly right-of-way line of Minnesota Trunk Highway 15; thence North 40 degrees 46 minutes 31 seconds East, along said right-of-way line 504.32 feet; thence North 46 degrees 57 minutes 57 seconds East, along said right-of-way line 321.26 feet to the east line of said Southeast Quarter of the Northeast Quarter; thence continue North 46 degrees 57 minutes 57 seconds East, along said right-of-way line 175.03 feet; thence North 58 degrees 02 minutes 47 seconds East, along said right-of-way line 771.77 feet; thence North 69 degrees 19 minutes 52 seconds East, along the southerly right-of-way line of Interstate Highway I-94, a distance of 529.74 feet; thence North 73 degrees 54 minutes 47 seconds East, along the last described right-of-way line 413.55 feet; thence North 80 degrees 05 minutes 25 seconds East, along the last described right-of-way line 379.16 feet to its intersection with the west line of the east 658.85 feet of said Northwest Quarter; thence South 04 degrees 04 minutes 06 seconds West, along said west line 1548.57 feet to the south line of said Northwest Quarter; thence North 89 degrees 24 minutes 03 seconds West, along the last described south line 1984.45 feet to the point of beginning. Subject to easements of record. Containing 59.01 acres, more or less.

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

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

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

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

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

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

6. On May 18, 1999, the City of St. Cloud submitted its petition and resolution requesting that certain property within Saint Augusta Township, including that owned by Schilplin and RCH, be annexed to St. Cloud pursuant to Minn. Stat. § 414.031. (A-6108). The petition contained all of the information required by statute, including a description of the territory for incorporation which is as follows:

Parcel 1

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

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

Parcel Two

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

Parcel Three

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

Beginning at the point where the east right-of-way line of Interstate Highway 94 intersects the north line of said Section 18; thence south along said east right-of-way line of Interstate Highway 94 to the point of intersection with the east right-of-way line of Stearns County Highway 75; thence south along said east right-of-way line of Stearns County Highway 75 to the south line of Lot 2, Block 3, ST. CLOUD I-94 BUSINESS PARK, according to the recorded plat thereof; thence easterly along the south line of said Lot 2, Block 3 to the east line of said Section 18; thence north along the east line of said Section 18 to the northeast corner thereof; thence continuing north along the east line of Section 8 on an assumed bearing of North  $0^{\circ} 29' 20''$  West, to the southwest corner of Government Lot 2 of said Section 8; thence North  $88^{\circ} 24' 46''$  East, 759.96 feet; thence

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

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

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

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

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

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

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

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

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

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

#### Saint Augusta Township's Petition for Incorporation

##### Population

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



approximately 236 people residing in the area proposed for annexation by the City of St. Cloud. Based on current patterns of development and absent municipal utility services, the Township's population is expected to increase to 4,208 by 2010 and to 4,892 by 2020. The Township's growth patterns have been influenced by its access and proximity to St. Cloud. (Garross [mbt vol. I] at 161, 172-173; MB Ex. 19 at 5-6, 9, 11; Ex. 208 at 2; Gartland at 202-203).

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

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

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

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19. The primary population centers in St. Augusta Township are located in the town sites of St. Augusta on the northeast side of the Township<sup>7</sup>, and Luxemburg on the west-central side of the Township<sup>8</sup>. In the St. Augusta town site there are currently 230 homes and 20 businesses. In addition, there are residential subdivisions located in the corridor connecting the two town sites. (Jopp [mbt vol. I] at 61; Jopp at 1057-59; MB Exs. 2, 8, 10).

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

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

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

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<sup>7</sup> Sections 1, 12 and 13 on MB Ex. 2.

<sup>8</sup> Sections 18 and 19 on MB Ex. 2.

Quantity of land, terrain, soil conditions

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

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

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

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

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

Present development pattern, land use and planning

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

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

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

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

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

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

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

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

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

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

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

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

39. The opening of the New Flyer Bus manufacturing plant will create increased demand for ancillary support services and businesses. It is also anticipated that some of these supporting businesses will locate in St. Augusta Township. The Township clerk has received increased inquiries from business concerns since the bus company began operations. The New Flyer plant is located near the border of St. Augusta Township and St. Cloud by I-94 and County Road 75. (Jopp [mbt vol. I] at 82; Garross [mbt vol. I] at 167-168; MB Ex. 19 at 34-35).

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

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

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

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

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

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

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

47. The areas outside of the Luxemburg and St. Augusta town sites in St. Augusta Township are planned as secondary growth areas. (Jopp at 1079).

48. St. Augusta Township has experienced development pressures within the last 10 to 20 years changing the basic character of parts of the Township from rural to urban or suburban. In particular, the Luxemburg and St. Augusta town sites are becoming urban or suburban in character. (Licht at 1799-1800; MB Ex. 19 at 105).

49. The southern one-third of St. Augusta Township is primarily rural in character. The Township has planned this area to be an "agricultural preservation area" to preserve, promote and maintain the use of this land for commercial agricultural operations. The Township's goal is to restrict residential growth from occurring in and conflicting with the long-term agricultural areas within the Township. (MB Exs. 11 at 86-87, 19 at 105).

50. Approximately 85 percent of St. Augusta Township is zoned general agriculture (A-1). (Jopp at 1247; Ex. 10; Licht at 1759).

51. The St. Augusta Township zoning ordinance contains provisions designed to protect agricultural areas from intensive future development through the use of a conditional use permit process and density requirements. To preserve farm land, the Township limits residential development outside of the town sites to lands determined to be marginal for crop production or soil quality. (MB Exs. 9, 19 at 27-28).

52. St. Augusta Township's zoning ordinance limits residential density in areas zoned agriculture to no more than 4 units in 40 acres (one unit per 10 acres), or 10 units in 40 acres with a conditional use permit. Since zoning went into effect, no conditional use permits have been granted. The ordinance establishes lot size limits and contiguity requirements that encourage more compact development than the 4/40 standard implies. The objective of the requirements is to provide farmers with the ability to sell portions of their land that are less productive, while retaining the majority of the land in agricultural uses. (Jopp at 1248; Exs. 9, 10; Licht at 1701, 1760, 1788).

53. There are approximately 20 large feedlots (50 or more animals) currently within St. Augusta Township. Eleven of the twenty feedlots are located in the southern half of the Township. (Garross [mbt vol. I] at 178; MB Exs. 17, 19 at 30).

54. St. Augusta Township regulates the location, development, and expansion of feedlots via provisions outlined in its zoning ordinance. The Township zoning ordinance stipulates the conditions under which feedlots are allowed to operate and sets out the standards for pollution control, manure utilization, setbacks, requests for operation expansion, MPCA feedlot permit requirements, and facility closure. (Licht [mbt vol. II] at 138; MB Ex. 19 at 31).

55. Stearns County is responsible for issuing zoning permits, inspections, and code enforcement in the Township in cases where the subject property is located within the shoreland, flood plain or wild and scenic rivers overlay districts. Stearns County Environmental Services Department is responsible for the review and enforcement of environmental regulations. St. Augusta Township issues building permits, performs inspections and enforces the Township code in all other areas. (MB Ex. 19 at 49-50; Licht at 1765).

56. Because regulation of these matters fall within Stearns County's jurisdiction, St. Augusta Township does not have separate ordinances regarding the regulation of flood plains, shoreland, scenic rivers, or environmentally sensitive areas. Instead, the Township's zoning ordinance incorporates by reference the County's environmental protection ordinances. (Licht at 1764-1767; Ex. 208 at 11).

#### Transportation

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

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

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

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

#### Existing governmental services

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

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

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

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

65. St. Augusta Township contracts with the Cities of Rockville, St. Cloud and Kimball for fire protection services. The total amount St. Augusta Township pays annually for fire protection services is approximately \$65,000. The Township pays approximately \$40,000 a year to St. Cloud for fire protection services, and a little over \$10,000 each to Rockville and Kimball. (Jopp [mbt vol. I] at 94-96, Jopp at 1110-1112, Jopp at 1308-1309; MB Ex. 19 at 72).

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

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

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

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

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

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

#### Environmental problems

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

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

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

75. There are 14 private wells in the area of St. Augusta Township proposed for annexation. Of these wells, 13 were tested and nine were found to have positive nitrate levels. Two of the nine had nitrate levels far exceeding recommended levels for drinking water in Minnesota.<sup>9</sup> Nitrates are associated with fertilizer use and septic system contamination. (Popken at 570-574; Exs. 159, 160).

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

#### Fiscal Impact

77. According to 1998 data, the assessed valuation of land and buildings in St. Augusta Township is \$30,480,500 and \$84,963,300, respectively. The total valuation for the entire Township is \$115,443,800. (MB Ex. 19 at 87).

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

79. In 1998, St. Augusta Township had disbursements or expenses in an amount totaling \$430,000. For that same year, St. Augusta Township received revenue

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<sup>9</sup> Ten parts nitrate per million is the maximum level allowed for drinking water to still be considered safe for small children. (Popkens at 572).



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

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

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

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

83. According to data compiled by the engineering firm of Bonestroo, Williamson and Kotsmith (BWK) for the Joint Planning Board, it would cost St. Augusta Township \$16.44 million to build the infrastructure needed to convey wastewater from the ultimate service area<sup>10</sup> surrounding St. Augusta to St. Cloud's wastewater plant for treatment. If St. Augusta Township were to convey its wastewater to a plant in Cold Spring for treatment, it would cost the Township \$28.57 million to service the same area. The "ultimate service area" is the area within the Township identified by a dashed line on the December 13, 1999 map depicting St. Cloud's urban growth area. The ultimate service area includes the proposed annexation area and the St. Augusta and Luxemburg town sites. It does not include the corridor between the town sites. (Shardlow at 119-122; Bettendorf at 1455-1459; Exs. 206, 220).

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

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<sup>10</sup> The Joint Planning Board's "ultimate service area" is identified by a broken orange line on the map labeled Exhibit 220 (St. Cloud Urban Growth Area Master Plan Planned Urban Expansion Areas) and includes both the primary and secondary planned urban areas south of I-94. This area differs from the primary growth area identified by the Township's comprehensive plan.

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

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

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

87. Cities typically finance the cost of installing sewer and water services through property assessments if there is a benefit to the property owners. To the extent that the utility project is going to benefit future growth, the cost is typically carried by the city and recovered through sewer availability and water availability hook up charges. With new developments, the entire cost of installing the sewer and water system is usually picked up by the developer. (Bettendorf at 1219-1222).

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

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

90. Incorporation of St. Augusta Township will not have a significant or detrimental fiscal impact on the Township or on any adjacent units of local government. While the Township will incur some additional costs for prosecution services, it will gain additional state aid.

### School districts

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

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

### Adequacy of services delivered by Township

93. St. Augusta Township currently provides adequate services for all its residents. As Township development and population growth increases, however, on-site septic systems and private wells will become inadequate to serve the urban/suburban portions of the Township. Ultimately, the Township will need to provide sewer and water services to accommodate continued development. (Garross [mbt vol. 1] at 177).

### Whether incorporation can best provide necessary services

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

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

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

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

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

Another vote was held on March 14, 1995. On this date, 507 people voted and 58 percent voted in favor of incorporation<sup>11</sup>. (Jopp [mbt vol. I] at 83-84, 112).

99. At the public hearing in this matter held Wednesday January 5, 2000, residents of St. Augusta Township overwhelmingly expressed support for the proposed incorporation of their Township and opposition to St. Cloud's proposed annexation. (Transcript Vol. IIIB; Twp. Ex. 30).

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

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

#### Contiguity of boundaries

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

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

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

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

#### State building code

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

#### Schilplin and RCH Partnership Petitions for Annexation

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

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

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<sup>11</sup> 294 votes were in favor of incorporation and 213 were opposed.

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

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

111. Although protected by various regulations, wetlands are not a complete bar to property development. A property owner may drain or fill wetlands to develop a property provided the property owner replaces the wetlands filled on a two-to-one ratio. Replacement can either be done on-site, by creating or restoring wetlands, or by buying "banking credits" from somebody who has restored or created a wetland within the same county of watershed. (Berg at 1375-1376; 1400).

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

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

114. In cooperation with Stearns County, St. Cloud plans on constructing an interchange at the intersection of Highway 15 and 33<sup>rd</sup> Street in the near future. The interchange will be located just north of Schilplin's property. It is estimated that the cost of the interchange construction will be between \$4 million and \$6 million. Federal funds may cover up to 80 percent. (Gaetz [mbt vol. II] at 176-177, 245-246).

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

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

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

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

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

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

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

122. Christopher Hauck and his father make up RCH Partnership ("RCH"), which owns property south of Interstate 94, and east of Highway 15 in St. Augusta Township. The property consists of 42 acres and is currently unplatted land zoned agricultural. The property is currently being rented for farming. The population of RCH's property is zero people. (Hauck at 790-792; Ex. 314).

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

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

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

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

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

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

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

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

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

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

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

#### St. Cloud's Petition for Annexation

##### Population

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

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

##### Quantity of land, terrain, soil conditions

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

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

##### Contiguity of boundaries

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

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

Present development pattern, planning, land uses

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

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

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

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

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

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

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

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

146. The Joint Planning Board is in the process of finalizing its "St. Cloud Urban Growth Area Master Plan." The plan identifies the geographic limits of the area surrounding St. Cloud that could be served by St. Cloud's waste water treatment plant. One of the goals of the plan is to protect urban areas from large unsewered developments. (Shardlow at 38-41; Exs. 207, 220).

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

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



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

149. St. Augusta Township has zoned the vast majority of the proposed annexation area as A-1, Agriculture, with scattered areas of R-1, suburban residential zoning, and a small pocket of B-3, general business zoning. (MB Exs. 10, 11, Ex. 208 at 9).

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

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

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

153. The southern portion of St. Cloud is currently experiencing increasing residential and commercial development pressures and it is anticipated that these development pressures will continue into the proposed annexation area before the year 2020. Preliminary plats for development down to the St. Augusta Township/St. Cloud border already exist. (Gartland at 171-172; Ex. 208 at 9, Ex. 213 at 24).

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

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

156. A significant portion of the proposed annexation area located between County Road 136 and Highway 15 will never be developed and instead, if annexed to St. Cloud, will become part of or compliment St. Cloud's planned Neenah Creek Regional Park. St. Cloud has designated this area as being a high priority for preservation and open space. This area is characterized by extensive wetland patterns. And while it is included in St. Cloud's ultimate service area, it is not designated a primary planned urban area. Because of the significant wetland features, neither St. Cloud nor St. Augusta Township anticipate that this area will experience

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

### Transportation

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

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

159. As part of an agreement with the New Flyer Bus company, St. Cloud has committed to constructing a full access interchange at the intersection of Interstate 94 and County Road 75. The projected cost for the interchange is between \$3 to \$6 million depending on whether the existing bridge is replaced. Stearns County has committed funding for half of the proposed interchange construction. (Gaetz at 386-394; 510-512; Hagelie at 991-994; Ex. 185).

### St. Cloud's ability to provide services

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

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

162. It is anticipated that by the year 2020, St. Cloud's peak demand for water will be 20.34 million gallons a day. (Gaetz at 1827-1828).

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

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

165. In 1999, the St. Cloud City Council resolved not to contract with additional cities for wastewater treatment services. Since that change in policy, however, St. Cloud has had discussions with the city of Pleasant Lake about providing future sewer service. If St. Cloud decides to contract with Pleasant Lake for sewer services, it will have to amend the resolution passed by its City Council in 1999 prohibiting the provision of wastewater treatment services to any additional cities that it does not

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

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

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

168. St. Cloud could extend municipal sewer and water services to the eastern portion of the proposed annexation area, closest to the proposed I-94/County Road 75 interchange and the wastewater treatment plant, almost immediately. And St. Cloud could connect the western portion of the proposed annexation area to services within the next 20 years. (Gaetz at 401-403, 476-477, 544-545; Ex. 209).

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

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

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

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

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

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

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

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

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

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

#### Environmental problems

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

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

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

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

#### Fiscal Impact

182. St. Cloud has an A-1 bond rating from Moodys and a AA rating from Standard & Poors. A strong bond rating from the investment community results in a more favorable interest rate on money borrowed by a municipality. (Norman at 628-630; Ex. 154).

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

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

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

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

186. St. Cloud anticipates that at least 70 percent of the cost of extending water and sewer services to the proposed annexation area will be assessed to the property owners in St. Augusta Township. (Norman at 735; Hagelie at 877).

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

#### School districts

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

#### Adequacy of town government to deliver services

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

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

#### Whether governmental services can best be provided through annexation

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

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

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

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

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

196. The extreme northwest corner of the proposed annexation area abuts the City of Waite Park. St. Cloud anticipates that the two cities would approve a concurrent detachment and annexation action for the small part of the proposed annexation area that is located north of I-94 and west of Highway 15 to provide rational contiguity and extension of services to the area from Waite Park. (Gartland at 191-192; Ex. 208 at 15-16).

Ability of remaining township to continue

197. If the proposed annexation is granted, St. Augusta Township will lose approximately 14 percent of its tax base and property tax revenue, amounting to about \$36,000 in tax revenue annually. And the remaining Township will lose about half (\$18,000) of its Homestead Agricultural Credit Aid, for a total loss of about \$50,000 annually. The reduction in revenue will be offset by the reduction in expenditures to service the subject area. For example, the Township will save approximately \$21,000 annually in road maintenance costs for the 8.7 miles of road in the proposed annexation area it will no longer have to maintain. In addition, with the annexation of property to St. Cloud, the Township's annual \$65,000 in costs for fire protection service will be reduced. And the remaining Township will be relieved of the responsibility and cost of prosecuting traffic violations occurring along the corridors of Interstate-94 annexed to St. Cloud. Consequently, the Township's annual prosecution costs will be less than the \$10,000 estimated. (Gartland at 181-182; Erickson at 758-759; Hagelie at 882; Jopp at 1108-1109, 1308-1309; Exs. 211, 213 at 21-22).

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

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

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

CONCLUSIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. That portions of the proposed annexation area described in St. Cloud's petition are about to become urban or suburban in character.

20. That the area proposed for annexation by St. Cloud would be better served by annexation to St. Cloud.

21. That annexation of the area described in St. Cloud's petition, which includes the petitioned Schilplin and RCH properties, is in the best interest of the subject area.

22. That St. Cloud is in the best position to provide municipal water and sewer services to the proposed annexation area.

23. That St. Cloud is better able to protect and regulate the environmentally sensitive areas located within the proposed annexation area.

24. That St. Cloud is better able to protect the public health, safety and welfare of the proposed annexation area and its residents.

25. That the increase in revenues for St. Cloud bear a reasonable relationship to the monetary value of the benefits conferred upon the area sought to be annexed.

26. That the remainder of St. Augusta Township will not suffer undue hardship by virtue of the annexation of the area described in St. Cloud's petition.

27. That the remainder of St. Augusta Township will suffer undue hardship if the area defined as St. Augusta's town site is also annexed to St. Cloud.

28. That the citations to transcripts or exhibits in these Findings of Fact are not intended to indicate that all evidentiary support in the record has been cited.

29. That these conclusions are arrived at for the reasons set out in the Memorandum which follows and which is incorporated into these conclusions by reference.

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

### ORDER

#### IT IS HEREBY ORDERED:

1. That the City of St. Cloud's request to amend its petition for annexation to include the St. Augusta town site is DENIED.
2. That the City of St. Cloud's petition for annexation is GRANTED.



3. That Frederick Schilplin's petition for annexation is GRANTED.
4. That RCH Property's petition for annexation is GRANTED.
5. That the effective date of the annexations is March 10, 2000.
6. That St. Augusta Township's motion to amend its petition for incorporation to change the name of the proposed city from "City of Neenah" to "City of Ventura" is GRANTED.
7. That, excepting the property defined as the proposed annexation area in St. Cloud's petition for annexation, St. Augusta Township's petition for incorporation is GRANTED.
8. That the remaining St. Augusta Township, which is all of the Township except for the area proposed for annexation to St. Cloud by St. Cloud's petition and the area specified in the 1974 orderly annexation agreement, is hereby incorporated as the City of Ventura.
9. That the plan of government for the new City of Ventura shall be Optional Plan "A". The city council shall have five members, consisting of four councilpersons and the mayor. The mayor's term shall be two years.
10. That the City of Ventura shall elect all of its councilpersons and mayor at-large, and that there are no wards within the City of Ventura.
11. That the ordinances of St. Augusta Township shall continue in effect within the boundaries of the newly incorporated City of Ventura, until repealed or replaced by the governing body of the City of Ventura.
12. That the population of the new City of Ventura is determined to be approximately 3,057.
13. That all license privileges be maintained as permitted by St. Augusta Township including the number of liquor licenses already authorized by the State of Minnesota until repealed by the governing body of the new City of Ventura.
14. That upon incorporation, all money, claims or properties including real estate owned, held or possessed by the former Township, and any proceeds or taxes levied by such Township, collected and uncollected, shall become the property of and inure to the benefit of the new City of Ventura with full power and authority to use and dispose of for such public purposes as the council deems best subject to claims of the creditors. This will include cash reserves/fund balances of the town and all public property and equipment held by St. Augusta Township.
15. That St. Augusta Township's outstanding indebtedness, if any, is the financial obligation of the City of Ventura.
16. That the first election of officers for the new City of Ventura shall be held on Tuesday, May 2, 2000. Any person of legal voting age residing within the City of Ventura is eligible to vote at such election, subject to and consistent with the relevant provisions of law.

17. That the hours of election shall be from 7:00 a.m. to 8:00 p.m.
18. That the polling place shall be the St. Augusta Town Hall and election judges for the election of officers shall be as follows: Howard Cater, Marilyn Hurrle, Albert Keppers, Judy Meyer, and Ellen Zipp.
19. That the Acting Clerk for election purposes shall be Harlan Jopp.
20. That the Acting Clerk shall prepare the official election ballot. Affidavits of candidacy may be filed by any person legally eligible to hold municipal office not more than four weeks and not less than two weeks before the election. The two persons receiving the two highest number of votes for councilperson will be elected to terms ending January 1, 2004. The persons receiving the third and fourth highest number of votes for councilperson will be elected to terms ending January 1, 2002. The person receiving the highest number of votes for mayor shall be elected to a term ending January 1, 2002. As the aforementioned terms begin to expire, elections shall be held during the November general elections of the year preceding the above-referenced term expiration dates. Thereafter, the terms for city council members and the mayor shall be four (4) years and two (2) years respectively, as provided in Minnesota Statutes § 412.02. The ballot shall be composed so that each voter shall be permitted to vote for four persons for councilpersons at-large and one person for mayor. In all other respects, the election shall be conducted in conformity with the provisions of the Minnesota Statutes concerning the conduct of municipal elections insofar as applicable.
21. That the incorporation shall be effective upon the election and qualification of new municipal officers for the City of Ventura as specified in Minnesota Statutes § 414.02, subd. 4.

Dated this 10<sup>th</sup> day of March 2000

  
KENNETH A. NICKOLAI  
Chief Administrative Law Judge

Reported: Transcribed (eleven volumes).

#### MEMORANDUM

This is a consolidated proceeding under Chapter 414 to consider three petitions filed with the former Minnesota Municipal Board. On January 14, 1999, St. Augusta Township filed a petition to incorporate the entire Township, except for the area contained in the 1974 orderly annexation agreement with St. Cloud. On May 18, 1999,

Frederick Schilplin and RCH Partnership filed a petition to annex to St. Cloud property they own in the northwest corner of the Township by Interstate 94 and Highway 15. And on the same date, the City of St. Cloud filed a petition to annex property located within St. Augusta Township, including the property owned by Schilplin and RCH Partnership.

In summary, the Administrative Law Judge concludes that the area proposed for annexation to the City of St. Cloud is about to become urban or suburban in character. The ALJ further concludes that annexation of this area to St. Cloud is necessary to protect the public health, safety and welfare and is in the best interest of the area. The Administrative Law Judge also concludes that the portion of the remainder of St. Augusta Township including the St. Augusta and Luxemburg town sites and the corridor between them is also becoming urban or suburban in character. And, although the southern one-third of the Township is primarily rural in character, the ALJ finds that incorporation of the entire remaining Township as the City of Ventura is in the area's best interest and is necessary to protect the public health, safety and welfare of the area. For clarity, the Administrative Law Judge will discuss the petitions and their related findings and conclusions in reverse order of filing.

#### St. Cloud's Petition for Annexation

On May 18, 1999, St. Cloud filed a petition and resolution requesting that certain property located within St. Augusta Township be annexed to St. Cloud. The property is more specifically described in Finding of Fact number six. The request to annex portions of St. Augusta Township to the City of St. Cloud is granted. The legal standards governing annexation of unincorporated property to an existing municipality are found in Minn. Stat. § 414.031. The statute sets out fourteen factors that must be considered in arriving at a determination. The factors are nearly identical to those that must be considered in an incorporation case under Minn. Stat. § 414.02. Findings on each of these factors have been made based on the evidence submitted in the record.

Following the listing of factors to be considered for annexation, the statute provides:

Based upon the factors, the board may order the annexation (a) if it finds that the subject area is now, or is about to become, urban or suburban in character, or (b) if it finds that municipal government in the area proposed for annexation is required to protect the public health, safety, and welfare, or (c) if it finds that the annexation would be in the best interest of the subject area. If only a part of a township is to be annexed, the board shall consider whether the remainder of the township can continue to carry on the functions of government without undue hardship. The board shall deny the annexation if it finds that the increase in revenues for the annexing municipality bears no reasonable relation to the monetary value of benefits conferred upon the annexed area. The board may deny the annexation (a) if it appears that annexation of all or a part of the property to an adjacent municipality would better serve the interests of the

residents of the property or (b) if the remainder of the township would suffer undue hardship.<sup>15</sup>

#### *Urban or Suburban in Character*

The area of St. Augusta Township which St. Cloud proposes to annex will be discussed as three geographic components: (1) the area north and east of Interstate 94; (2) the area south of Interstate 94 and west of County Road 75; and (3) the area southeast of the St. Augusta town site and west of Interstate 94.

The evidence amply demonstrates that the area north and east of Interstate 94 is about to become urban or suburban in character. This area was included in St. Cloud's 1993 comprehensive plan. Testimony established that there is increasing pressure for residential and commercial development along the southern and eastern portions of St. Cloud. Currently, several businesses are located just north of Interstate 94 in St. Cloud. Moreover, Township officials conceded in the hearing that the area north and east of Interstate 94 would be better served by the City of St. Cloud. Township officials argue, however, that annexation should not occur until St. Cloud is ready to provide municipal sewer and water services to the area. The evidence suggests that St. Cloud will be able to establish such services to this area within five to ten years. But the evidence also supports the need to plan for sewer and water services with stable geographic borders.

When arguing for incorporation as a municipality, St. Augusta Township emphasizes the importance of stable boundaries in planning for water and sewer services where there are pressures for urban or suburban development. This argument is persuasive and when applied to the area north and east of I-94, yields the conclusion that annexation should occur now and not at some unspecified date in the future. Even Township Planner Licht testified that, if it would facilitate St. Cloud's planning for the services in this area to annex this area immediately, then immediate annexation should be ordered.<sup>16</sup> Moreover, as the Township has conceded that this area should eventually be part of St. Cloud, further discussion of the evidence related to this area is not necessary. The ALJ concludes that annexation of all Township land north and east of I-94 at this time is in the area's best interest.

The area south of Interstate 94 and west of County Road 75 is also becoming urban and suburban in character. This portion of the area proposed for annexation, however, contains wetlands and environmentally sensitive areas in need of protection. The proximity of freeway interchanges at each end of the strip will attract development such as the potential uses being discussed for the Hauck and Schilplin properties. On the eastern side of the northern strip, there is already existing a business park that has room for expansion. That business park receives its water from a common well and has a private septic system. And, given that the land in this area is not prime agricultural land, Township Planner Licht envisions increased demand for housing in this area. Despite evidence of increased development pressures, the Township has not planned for the extension of sewer or water to this area in the foreseeable future. Instead, the

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<sup>15</sup> Minn. Stat. § 414.031, subd. 4.

<sup>16</sup> Licht at 1728.

Township's comprehensive plan identifies this area as being within the secondary growth corridor. Areas within the secondary growth corridor are not expected to urbanize within the next 20 years.

The majority of this area, including Schilplin's and RCH Partnership's property will become urban or suburban within the next 20 years. Township zoning allows for development of the area. As shown on Municipal Board Ex. 8, there are already several residential housing developments in the areas. St. Cloud anticipates that it will be able to extend municipal sewer and water services to this area within the next 20 years. And, with respect to Schilplin's and RCH Partnership's property, St. Cloud anticipates providing sewer and water services within five to ten years. St. Cloud is already installing public sewer and water main improvements along 33<sup>rd</sup> Street South, parallel with and approximately one mile north of Interstate 94.

Finally, the area southeast of the St. Augusta town-site but west of Interstate 94 is also about to become urban or suburban in character. This portion of the Township proposed for annexation to St. Cloud abuts Interstate 94 and County Road 75. The St. Cloud wastewater treatment plant and the St. Cloud Industrial Park containing the New Flyer Bus manufacturing plant are just to the north and east of this area. A new interchange at the intersection of I-94 and County Road 75 will be constructed in this area in the near future. Demand for commercial and residential uses will increase with the completion of the interchange and the resulting increased traffic. In addition, the opening of the New Flyer Bus manufacturing plant on the border of St. Cloud and St. Augusta east of Interstate 94 will bring increased residential growth and ancillary businesses to the area.

#### *Municipal Government Required to Protect Public Health, Safety and Welfare*

The soils in the entire area proposed for annexation to St. Cloud are not suitable for septic system use. Consequently, continued development in this area increases the risk of septic system failures and poses a threat to the groundwater in the area. The presence of extensive wetlands only exacerbates the potential for environmental harm and drinking water contamination. St. Cloud is better able to provide this area with sewer and water services and thus lower the risk of ground water pollution. In fact, St. Cloud anticipates that it will be able to extend municipal services to some of those areas about to become urban or suburban within the next five to ten years. St. Cloud can quickly extend sewer and water services to the area located southeast of the St. Augusta town site because it is close to the existing treatment plant and there is an existing sleeve under Interstate 94 through which water and sewer pipes can be extended. St. Augusta Township, on the other hand, has no plans to provide sewer or water services to the proposed annexation area within the next 20 years. Given the potential for groundwater contamination from the use of septic systems, the ALJ concludes that annexation of the proposed area to St. Cloud is in the best interest of public health, safety and welfare of the area.

At the public hearing in this matter, Township residents living in the area proposed for annexation, with the exception of petitioners Schilplin and Hauck, voiced opposition to annexation. While the Administrative Law Judge is cognizant of their desire to maintain the present character of the property adjoining their lands, Township

zoning currently allows development to continue in this area without plans to provide sewer or water services for the next twenty years. In the area proposed for annexation, 13 of 14 private wells were recently tested and nine of them showed elevated levels of nitrates. While only two had nitrate levels exceeding safety recommendations, these levels indicate that problems are developing. Annexation of this area to the City of St. Cloud will allow more immediate access to sewer and water services that are necessary to protect the public health from ground water contamination in the future.

In addition, both Township and St. Cloud officials envision that a large portion of the proposed annexation area located between County Road 136 and Highway 15 will not experience significant urban development due to the extensive wetlands in the area. St. Cloud has designated this area to become part of or compliment St. Cloud's planned Neenah Creek Regional Park. Despite the fact that the need for sewer and water services is not immediate in this area, the ALJ finds that this area should also be annexed to St. Cloud. Because of its more comprehensive set of environmental protection ordinances, the ALJ finds that St. Cloud will be better able to protect and regulate the environmentally sensitive features of this area. In addition, as this area is located in between areas that are seeing urban development, it is reasonable to keep the boundaries of the proposed annexation area contiguous by including this area.

*Best Interest of the Subject Area/ Remaining Township's Ability to Function*

The Administrative Law Judge concludes that annexation of the proposed area to St. Cloud is in the best interest of the subject area. As stated above, significant portions of the proposed annexation area are or are about to become urban or suburban in character. St. Cloud is better able to provide municipal sewer and water services to these areas in the time frame when they will be needed. And given that the soils are not suited for septic system use, municipal services are needed to protect the public health, safety and welfare of the area. The ALJ also concludes that annexing the area proposed to St. Cloud will not cause undue hardship to the remainder of St. Augusta Township or adversely affect its ability to continue to carry on the functions of government.

Specifically, the Administrative Law Judge finds that the annexation of the proposed area will cause St. Augusta Township to lose approximately 14 percent of its tax base, amounting to approximately \$36,000 annually. And the remaining Township will lose approximately \$18,000 in Homestead Agricultural Credit Aid. This reduction in revenue, however, will be offset by reductions in Township expenditures to service the annexation area. The remaining Township will save approximately \$21,000 annually in road maintenance costs for the 8.7 miles of Township roads in the annexation area that it will no longer have to maintain. The remaining Township will also see savings in fire protection and future municipal prosecution costs. Accordingly, the ALJ concludes that any losses in revenue that the remaining Township will incur as a result of the annexation will be offset by savings the Township will realize in service expenditures. As a result, the annexation will not adversely impact the remaining Township's ability to carry out its governmental functions.

## Other Issues

### *St. Cloud's Available Land for Development*

The Township argues that the land St. Cloud proposes to annex is not needed by the City since there is more than sufficient land for development already within the St. Cloud city limits. The Administrative Law Judge concludes that a calculation of St. Cloud's available acreage does not address the issues raised by the statutory criteria. Minn. Stat. § 414.031 allows annexation if it is in the best interests of the subject area or is necessary to protect the public health, safety and welfare. Whether St. Cloud has other land it could develop or re-develop for other uses to accommodate its growth is not an issue. The statute focuses on the needs of the land area that is proposed for annexation. Even if the statute were interpreted to focus on whether the annexing city needed the land for development, the Administrative Law Judge is convinced that annexation of these Township lands is appropriate. As explained by St. Cloud Planning Director Gartland, annexation will allow development pressures to be focused on land that is more suitable for development – because of its marginal use for other purposes - and at the same time lessening the pressure to develop land suitable for and still in agricultural use on the western edge of the City.<sup>17</sup>

### *Interstate 94 as Logical Barrier*

Currently St. Augusta Township extends both north and east of I-94. Although the Township concedes that the areas north and east of I-94 should eventually become part of the City of St. Cloud, the Township maintains that annexation should not occur until St. Cloud is ready to extend sewer and water services to the area. In opposing St. Cloud's annexation of this and the portions of land immediately south and west of I-94, the Township argues that I-94 is a formidable and logical barrier or boundary. Township Planner Licht testified about the role of I-94 as a significant cultural and economic barrier between the Township and the City of St. Cloud. While this argument is superficially appealing, the evidence in the record shows that already I-94 is a visual barrier only. Currently 57 percent of St. Augusta Township's working residents are employed in St. Cloud. Schools are on the northern side of I-94 as are shopping and recreation. The record also reflects that many other municipalities have areas divided by interstate highways.

Nor is the existence of I-94 a barrier to the provision of public services. At the time of the construction of I-94, a sleeve was placed under the freeway to allow for the extension of sewer and water services from St. Cloud facilities. The sleeve is located on the eastern end of the freeway, south and east of the St. Augusta town site. The presence of that sleeve means that I-94 is not a barrier to the provision of services to the eastern portion of the area proposed for annexation. In addition, evidence presented by St. Cloud indicated that the City could provide utility service to properties on the western end of the area proposed for annexation (such as the Schilplin and Hauck properties) within five to ten years. While there may be some adverse consequences for neighborhood contiguity, the Administrative Law Judge is convinced that the need for public sewer and water services into these areas in the relatively near

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<sup>17</sup> Gartland at 1859.

future outweighs the diminished social connection these areas might have to St. Cloud if Interstate 94 was not present.

#### St. Cloud's Request to Amend Annexation Petition to Include St. Augusta Town Site

By its post-trial memorandum, St. Cloud requests that the Administrative Law Judge amend the City's annexation petition to include the St. Augusta town site if the ALJ concludes that this area is about to become urban or suburban. While the ALJ does find that the St. Augusta town site is about to become urban or suburban, the ALJ will not amend St. Cloud's petition to include this site in its annexation area. The ALJ finds that if the St. Augusta town site were annexed to St. Cloud, it would deprive the remaining Township of a large portion of its revenues and the remaining Township would suffer undue hardship.<sup>18</sup> Moreover, when St. Augusta Township attempted to submit evidence regarding the potential impact on the rest of the Township if the St. Augusta town site was annexed to St. Cloud, counsel for the City objected on the grounds of relevancy. Specifically, counsel for St. Cloud argued that evidence regarding the impact the loss of town site revenues would have on the remaining Township was beyond the scope of the petition for annexation. The ALJ sustained counsel's objection.<sup>19</sup> Consequently, the Township was foreclosed from developing a complete record on this issue as it was beyond the scope of the original annexation petition. For both of these reasons, St. Cloud's request to amend its annexation petition to include the St. Augusta town site is denied.

#### Schilplin and RCH Partnership's Petition for Annexation

Frederick Schilplin and RCH Partnership have petitioned to have their property annexed to the City of St. Cloud. Findings on each of the factors contained in Minn. Stat. § 414.031 have been made based on the evidence submitted in the record.

As stated above, the Administrative Law Judge may order annexation based on the factors if he finds the subject area is about to become urban or suburban in character, or if he finds that municipal government is required to protect the public health, safety and welfare; or if he finds that the annexation would be in the best interest of the subject area. If only a part of a township is to be annexed, the ALJ shall consider whether the remainder of the township can continue to carry on the functions of government without undue hardship. The ALJ must deny the annexation if he finds that the increase in revenues for the annexing municipality bears no reasonable relation to the monetary value of benefits conferred upon the annexed area.<sup>20</sup>

#### *Urban or Suburban in Character*

Both Schilplin and RCH Partnership's properties are located in the northwest corner of St. Augusta Township. Schilplin's property is located in the southwest and southeast quadrants of the intersection of Interstate 94 and Highway 15. St. Cloud plans on constructing an interchange at the intersection of Highway 15 and 33<sup>rd</sup> Street just north of Schilplin's property. Once built, the interchange will create a stronger

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<sup>18</sup> MB Ex. 7.

<sup>19</sup> Jopp at 1129-1132.

<sup>20</sup> Minn. Stat. § 414.031, subd. 4.



impetus for growth to continue moving towards Schilplin's property. Given the high visibility of his property's location at the intersection of I-94 and Highway 15, and the development pressures already existing in the southern portion of St. Cloud, Schilplin's property is about to become urban or suburban in character. Likewise, RCH Partnership's property, which is located south of Interstate 94 and east of Highway 15, is about to become urban or suburban in character. The Crossroads Shopping Center and a Holiday Inn are located approximately 3.5 miles north of RCH's property in St. Cloud. And several businesses are located nearby at the intersection of I-94 and County Road 74.

#### *Municipal Government Necessary to Protect Public Health and Safety*

Both Schilplin's and RCH Partnership's properties are facing development pressures and both properties consist of soils rated "severe" or "poor" for septic system use. Under St. Augusta Township's comprehensive plan, however, both properties are located within the secondary growth corridor. According to the Township's plan, secondary growth corridors are not intended to urbanize within the next 20 years. In fact, St. Augusta Township has no plans to provide water and sewer treatment to Schilplin's or RCH's property within the next 20 years. On the other hand, St. Cloud estimates that it could provide sewer and water services to both properties within the next five to ten years. The Administrative Law Judge concludes that St. Cloud's ability to extend water and sewer services sooner will better protect the public health, safety and welfare of this area.

#### *Best Interest of Subject Area*

Given the existing developmental pressures, it is in the best interest of Schilplin's and RCH Partnership's properties to be annexed to St. Cloud. Both properties consist of soil rated "severe" to "poor" for septic system use. Unlike St. Augusta Township, which does not plan to extend water or sewer services to this area within the next 20 years, St. Cloud will be able to provide municipal services to Schilplin's and RCH's properties within five to ten years. Municipal services are necessary for the commercial and residential development that is anticipated in this area. In addition, the ALJ concludes that annexing these properties to St. Cloud will not adversely impact the remaining Township's ability to carry out its governmental functions. The owners of these two properties desire annexation although the majority of their neighbors oppose annexation to St. Cloud. As discussed above, while being cognizant of the neighbors' opposition to annexation, the ALJ is satisfied that annexation of these properties to St. Cloud is in the best interest of the area over the long run.

#### St. Augusta Township's Petition for Incorporation

St. Augusta Township seeks to incorporate itself as the City of Ventura. Incorporation of a new municipality is governed by Minn. Stat. § 414.02. The request for incorporation is granted with the boundary adjustments discussed above. The statute sets out thirteen factors that must be considered in arriving at a determination. The factors are nearly identical to those that must be considered in an annexation request under Minn. Stat. § 414.031. Findings on each of these factors have been made, based on the evidence submitted in the record.

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>21</sup>

#### *Urban or Suburban in Character*

When considering the statutory factors on which findings have been made, the Administrative Law Judge concludes that portions of St. Augusta Township are about to become urban or suburban in character. Specifically, the St. Augusta and Luxemburg town sites and the corridor between them are becoming urban or suburban in character. The entire Township currently has a population of approximately 3,293 people living in 1,600 households. The majority of the households are located in the town sites and the connecting corridor. For example, the town site of St. Augusta has 230 households and a review of the Township's plat map shows development occurring in a southwesterly direction from the St. Augusta town site to the Luxemburg town site. The Township's comprehensive plan also reflects this pattern by identifying the town sites as primary growth centers and the corridor as transitional agriculture.<sup>22</sup> While 84% of the geographic land area of the Township is now agricultural in character, only eight percent of the Township's population earns their living by farming. As further evidence of the urban and suburban nature of the population, 57% of the Township's working residents are employed within the city limits of St. Cloud.

Although Township and City of St. Cloud officials differ as to the 20 year projected growth for St. Augusta Township, both agree that currently there are substantial development pressures in the area.<sup>23</sup> Prior to the enactment of the platting moratoriums, St. Augusta Township averaged 25-30 single family building permits per year. The pressure for development growth will be both from the north, as St. Cloud

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<sup>21</sup> Minn. Stat. § 414.02, subd. 3.

<sup>22</sup> MB Ex. 11 at 67.

<sup>23</sup> The Township's population estimate was higher in part because the Township did not anticipate the moratoriums on platting imposed by both the Township and the County. (Licht at 1615).

further expands southward into the former St. Cloud Township towards Interstate 94, and from the east, as expansions of the St. Cloud industrial park result in an increased demand for additional housing in the area. The recent completion of the New Flyer Bus manufacturing plant near the border of St. Augusta Township is one example of development pressure. The plant is located by Interstate 94 and County Road 75. It currently employs 400 people and expects to add significantly more employees in the near future as production increases. The New Flyer Bus plant will not only create an increased demand for housing, but it will also create increased demand for ancillary support services and businesses. It is anticipated that some of these supporting businesses will locate in St. Augusta Township. And development growth on the eastern edge of the Township will be increased further by the new interchange planned for construction at the intersection of I-94 and County Road 75. Finally, the Township will see increased development pressures due to the rapid growth occurring in the St. Cloud area in general. St. Cloud's population increased from 42,566 in 1980 to a present population of 62,781. And it is anticipated that St. Cloud will have a population of approximately 85,000 by the year 2020.

Township officials have developed a comprehensive plan and an implementing zoning ordinance based on their belief that the primary urban growth areas in the Township will be the St. Augusta and Luxemburg town sites followed by development in the corridor linking them. Township Planner Licht testified that the St. Augusta town site is the core from which the new city will develop and that urban services will be extended toward Luxemburg through the middle of the town after further development in the St. Augusta town site.<sup>24</sup> Examination of the list of current plats and a visual tour of the area confirm the reasonableness of the Township's expectations.<sup>25</sup>

The southern one-third of the Township, however, is rural in character and is expected to remain so during the next 20 years. St. Augusta Township has planned this area to be an "agricultural preservation area" to preserve, promote and maintain the use of this land for commercial agricultural operations. The Township's goal is to restrict residential growth from occurring in and conflicting with long-term agricultural areas within its boundaries. Despite not being urban or suburban, it is still within the best interests of the area that this portion of the Township be incorporated into the new city as will be discussed below.

#### *Adequacy of Form of Government to Protect Public Health, Safety and Welfare*

The Township form of Government under which St. Augusta operates is not adequate to address the eventual need for sewer and water services in the area. The inherent instability of the Township's borders and the potential for further annexations greatly impedes the Township's ability to plan for or invest in infrastructure for public sanitary sewer and water. In addition, as an incorporated city, St. Augusta Township will be better able to obtain the long-term financing necessary for constructing the services. To accommodate growth the Township board anticipates that once incorporated as a city, it will begin the process of preparing for eventual municipal sewer and water services. Although it does not anticipate a need for those services in

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<sup>24</sup> Licht at 1730-31. See also, Licht at 1683-1685.

<sup>25</sup> MB Ex. 10.

the immediate future, the zoning ordinance requires that all future plats be established with "ghost platting" to provide for low density development on private systems until sewer and water are available. Once those services are available, additional density is permitted along pre-determined lines allowing sewer and water facilities to be added while minimizing disruption to existing streets. This ghost platting is designed to minimize the cost of adding sewer and water services in the future while allowing for increased development density at the time. While the Township has established platting requirements and begun planning for public services, the Township needs firm jurisdictional boundaries in order to adequately plan for and finance the necessary public services.

In seeking to have the petition for incorporation denied, the City of St. Cloud has stressed that it is in the best position to provide necessary sewer and water to areas of the township as they are needed. In this proceeding, St. Cloud established that it has the water and sewer treatment capacity to provide services to the area it now proposes to annex. In addition, while St. Cloud's Exhibit 220 indicates that St. Cloud foresees the Luxemburg and St. Augusta town sites to be in its ultimate service area, it does not include the corridor of development anticipated between the town sites. St. Augusta, on the other hand, has done preliminary planning to serve the entire corridor and established platting requirements to facilitate that in the future.

St. Cloud owns and operates the sewage treatment plant that provides service to five cities in the area. That treatment plant is located just to the east of St. Augusta and is currently the closest plant to provide treatment for waste collected in the eastern portion of the Township. The current capacity of the plant is committed by contract to the five cities that are served. Despite these contractual commitments, St. Cloud established that it has the ability to provide sewage treatment to the area proposed for annexation in the near term. The City of Cold Spring also owns and operates a treatment plant located to the west of St. Augusta Township. St. Augusta Township has recently begun exploring the option of connecting to this plant since St. Cloud recently changed its policies to exclude a future city (such as Ventura) from contracting for sewage treatment. One of St. Cloud's witnesses, David Rusk further testified that using control over the sewage treatment plant was a legitimate means to force annexation of adjoining land.

The Administrative Law Judge is not convinced, however, that denying incorporation so that St. Cloud might annex and service additional portions of the Township at a later time is sound. As discussed previously, Ex. 220 clearly indicates that St. Cloud does not envision service to the entire corridor between St. Augusta and Luxemburg. In addition, the zoning requirements of St. Augusta with respect to ghost platting indicate the seriousness of Township officials in addressing these future needs. While the Township does not now have a financing plan in place, once stable municipal boundaries are established, financing for the mains and laterals is more likely to be secured and contract negotiations or permit applications can be made to arrange for treatment of waste collected.

This result is not inconsistent with the Joint Planning Board's latest draft plan for St. Cloud's ultimate urban service area. Through the multi-county area planning process St. Cloud has indicated its belief that the two town sites are in its "ultimate

service area". That, however, does not require the mains and lateral sewers be controlled by St. Cloud. St. Cloud can provide sewage treatment for wastes collected in the area within its designated ultimate service boundary through contractual arrangements if St. Cloud changes its policy and allows new municipalities to connect with its plant. This arrangement is used currently by St. Cloud to provide sewage treatment for the adjacent cities of Waite Park, Sauk Rapids, Sartell, and St. Joseph. In addition, the Minnesota Pollution Control Agency does have the ability to resolve future controversies over sewage treatment capacity under some circumstances.

Moreover, the future ability to provide sewer mains and laterals as growth occurs in the St. Augusta-Luxemburg corridor requires planning today for that growth. St. Augusta's zoning ordinance and provision for ghost platting are efforts to direct near term growth in a manner consistent with the future need for sewer. And St. Augusta's arguments that it requires stable boundaries before it can secure long term financing necessary to develop municipal sewer and water services are convincing. The lack of stable boundaries supports the conclusion that the existing township form of government will not be adequate to protect the public health safety and welfare in the future. The Township has begun to investigate the provision of both sewer and water services. While the need for sewer and water in this area is not immediate, the need to begin planning for the services and to establish zoning policies consistent with those needs is immediate. The Township has established planning and zoning policies to eventually provide for these municipal services and now needs the stable boundaries of municipal status to pursue the financing and construction options for this anticipated corridor of growth.

St. Cloud pointed out that Minnesota law provides for an enhanced form of Township status for which St. Augusta would qualify, that allows for additional powers including the authority to establish sewer or water districts. While this possibility exists, the Township did not elect to pursue that path. Importantly, only with municipal status will the area have stability in its geographic borders so that it can plan and finance infrastructure improvements with the assurance that portions of the area to be served will not be subject to future annexations. The Administrative Law Judge concludes that the Township's arguments that the threat of future annexations will be a major impediment to its ability to plan and finance future infrastructure are reasonable.

### *Best Interests of the Area*

Incorporation of the remaining portion of the Township is in the best interest of the remaining Township area (after annexation) when assessed by several factors. First, it is consistent with the expressed desires of current St. Augusta residents. The Administrative Law Judge interprets legislative language establishing a "best interests of the area" criteria as legislative intent to give weight to the expressed wishes of current residents of the area. In 1994, the Town Board of St. Augusta asked residents to vote on whether or not to seek incorporation as a municipality. Approximately 350 residents voted and a majority voted against incorporation. After a series of public meetings on the topic, a second vote was taken in 1995 and the result was 294 to 213 in favor of incorporation as a municipality. In addition, during this proceeding, the public was provided the opportunity to state for the record their views on the proposed

incorporation and the proposed annexation. The support for incorporation and opposition to annexation among the over 100 residents in attendance was overwhelming.

It is also in the best interests of the area that the remaining Township be allowed to incorporate because only St. Augusta has begun planning for the corridor of growth that is anticipated between the two town sites. Municipal Board Ex. 8 indicates that growth is already underway. The combination of ghost platting, allowing higher densities when combined with shared services and the planning for municipal water and sewer to be provided in the future will meet the anticipated needs of this corridor.

Approximately the southern one-third of the township is now and appears likely to remain rural in character. The Township plan refers to this as agriculture preservation, but the actual zoning ordinance permits residential development. The Township zoning ordinance allows development of 4 dwellings per 40 acres. Higher densities are allowed with a conditional use permit. However, the ordinance does establish lot size limits and requirements of contiguity and other criteria which encourage more compact development as well as development focused on lands marginal for agricultural use. The objective of the requirements are to provide farmers with the ability to sell portions of their land that are less productive, while retaining the majority of the land in agriculture uses. The Township has planned for this area and is seeking to maintain its rural character. Township Planner Licht stressed that protection of this portion of the township could be better accomplished if incorporation were allowed.

The Administrative Law Judge concludes that this area should not remain a separate township, independent of the new city. The remaining township would be too small in population, tax base and other resources to effectively govern itself. Accordingly, the southern portion of the Township, although not becoming urban or suburban, should be included with the boundaries of the new city.

#### *Motion to Amend Petition*

The Township's motion to amend its petition for incorporation to change the name of the proposed city from Neenah to Ventura is granted. Although one party filed a written objection to the motion urging, among other arguments, that cities be named to only honor deceased individuals, there is no statutory impediment to allowing the Township to adopt the name of Ventura. The Rules of the former Municipal Board specifically allow for amendments to petitions and the Township complied with all applicable requirements.<sup>26</sup>

#### *Form of Government*

As specified in Minn. Stat. 414.02, subd.3, the form of government for the new City of Ventura shall be "Optional Plan A". The Ordinances of the township shall continue in effect until repealed by the governing body of the new municipality. The number of council members shall be five, elected at large, as in the existing township. No evidence was presented for the record indicating a need for the Administrative Law

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<sup>26</sup> Minn. Rule pt. 6000.0700.

Judge to make findings establishing a ward system for election of council members due to a need for area representation.

K.A.N.

*K.A.N.*