15-2900-13147-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE OFFICE OF STRATEGIC AND LONG RANGE PLANNING

In re the Petition for Municipal Boundary Adjustments:

St. Paul Park/Grey Cloud Island Township (A-6185);

Cottage Grove/Grey Cloud Island Township (A-6186).

St. Paul Park/Grey Cloud Island Township (OA-718/718-1)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-entitled matter came on for hearing before Administrative Law Judge Beverly Jones Heydinger at 9:30 a.m. on October 17, 2000 and continuing on October 18, 20, 23, 24 and 25, 2000, at St. Paul Park City Hall, 600 Portland Avenue, St. Paul Park, Minnesota. The record remained open for the submission of public comments until November 3, 2000. The parties submitted post-hearing briefs on November 21, 2000, and the record closed on November 28, 2000 with the submission of the parties' reply briefs.

R. Gordon Nesvig, Attorney at Law, Box 255, Cottage Grove, Minnesota, 55016 appeared on his own behalf as the Petitioner in this matter. John Bannigan, Jr., Attorney at Law, Kelly & Fawcett, 2350 Piper Jaffray Plaza, 444 Cedar Street, St. Paul, Minnesota 55101, appeared on behalf of Grey Cloud Island Township. James Shiely, Jr., Attorney at Law, Gearin and Shiely, P.A., 500 Degree of Honor Building, St. Paul, Minnesota 55101 and Barry Sittlow, City Administrator, St. Paul Park City Hall, 600 Portland Avenue, St. Paul Park, Minnesota, 55071, appeared on behalf of the City of St. Paul Park. Karen Cole, Attorney at Law, Kennedy & Graven, 470 Pillsbury Center, 200 South Sixth Street, Minneapolis, Minnesota 55402 and Ryan Schroeder, City Administrator, Cottage Grove City Hall, 7516 80th Street, Cottage Grove, Minnesota 55016, appeared on behalf of the City of Cottage Grove.

NOTICE

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

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

[1] Minn. Stat. § 414.07, subd. 2 (2000).

this Order[2]. No request for an amendment, however, shall extend the time of appeal from this Order.

STATEMENT OF ISSUES

Should the property included in the Petitions A-6185 and A-6186 and Joint Resolution for Orderly Annexation OA-718/718-1, currently part of Grey Cloud Island Township, or any portion of it, be annexed to either St. Paul Park or Cottage Grove?

FINDINGS OF FACT

Procedural History

1. On November 4, 1999, R. Gordon Nesvig ("Petitioner") filed two petitions with the Office of Strategic and Long Range Planning for annexation of unincorporated property in Grey Cloud Island Township pursuant to Minn. Stat. § 414.031. Petition A-6185 for annexation to St. Paul Park, contained all of the information required by statute, including a description of the territory for annexation, which is as follows:

> Lots 1 to 24, inclusive, Block 114, WERTHEIMER'S FIRST ADDITION, as surveyed and platted and now on file and of record in the office of the Register of Deeds of Washington County, Minnesota, including any streets vacated or being vacated which accrue to said property by the reason of said vacation; and,
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> Lots 8 to 24, inclusive, Block 115, in WERTHEIMER'S FIRST ADDITION, as surveyed and platted and now on file and of record in the office of the Register of Deeds of Washington County, Minnesota, including any streets vacated or being vacated which accrue to said property by the reason of said vacation; and,
>
> Block 113, Lots 12 to 20, inclusive, Block 116; and Block 121; of Division No. 4 of St. Paul Park, as surveyed and platted and now on file and of record in the Office of the Register of Deeds Washington County Minnesota; and,
>
> Block "D"; Lots 2 and 3, Block 122, of Division No. 4 of St. Paul Park, as surveyed and platted and now on file and of record in the office of the Register of Deeds of Washington County, Minnesota; and, those portions of the North Half Section 13 and Government Lots 1 and 2 of Section 14, Township 27 North, Range 22 West, lying between the East Bank of the Mississippi River and right-of-way of the Chicago, Burlington and Quincy Railroad, and lying South of the South line of 15th Avenue extended easterly and westerly, which avenue is a platted and dedicated street in said Division No. 4 of St. Paul Park; all of the land described in this paragraph being subject to an easement for flowage purposes by the United States of America as set forth in that certain judgement made and entered in the District Court of the United States, District of Minnesota,

[2] Minn. Rule pt. 6000.3100 (1999).

Third Division, on October 30th, 1935, a certified copy of which was recorded in the office of the Register of Deeds of Washington County, Minnesota, on November 1st, 1935, in Book 128 of Deeds, page 295; and,

That part of Government Lot 1, Section 14, and the North One-half of Section 13, Township 27 North, Range 22 West, lying South of Blocks 122 and D of Division No. 4 of St. Paul Park and Westerly of the East line of said Block D extended Southerly to the South line of 15th Street, County of Washington, State of Minnesota.

Together with any roads streets or alleys adjacent to the above property, and also those roads streets or alleys within the above property which have been vacated, or may be vacated which accrue to any of the above described property by reason of such vacation.

County Highway 75 will remain a County Highway.

2. Petition A-6186 for annexation to Cottage Grove contained all of the information required by statute, including a description of the territory for annexation, which is as follows:

Lot three (3), Section Fourteen (14); The Northwest Quarter of the Northwest Quarter (NW ¼ of NW ¼), Section Twenty-four (24); and

The North half of the Southeast Quarter (N ½ of SE ¼), the North Half of the Southwest Quarter (N ½ of SW ¼), and the Southwest Quarter of the Southwest Quarter (SW ¼ of SW ¼), Section Thirteen (13); all in Township Twenty-seven (27) North, Range Twenty-two (22) West; and,

EXCEPTING therefrom the following, to-wit: That part of the Northwest Quarter of the Northwest Quarter (NW ¼ of NW ¼) in said Section Twenty-four (24) lying on Grey Cloud Island consisting of ten (10) acres, more or less; and,

EXCEPTING all of the following: A tract of land in the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) of Section Thirteen (13), Township Twenty-seven (27) North, Range Twenty-two (22) West, described as follows, to-wit: Beginning at the intersection of the East and West Quarter line of said Section Thirteen (13) with the center line of County Road No. 75 as now established; thence West along the East and West Quarter line 401.94 feet to an iron stake; thence South 7 degrees East 254.90 feet to an iron stake; thence East 159.94 feet to an iron stake; thence North 220 feet to an iron stake; thence East 214.89 feet to the center line of County Road No. 75; thence North 7 degrees West along the center line of County Road No. 75 a distance of 33.25 feet to the point of beginning. Subject to rights of County Road No. 75. Containing 1.2 acres more or less; and

A tract of land situated in the S ½ S ½ Section 13 and the N ½ of Section 24, T. 27 N, R. 22 W of the Fourth Principal Meridian, Washington County, Minnesota more particularly described as follows, to wit; and

Commencing at the Northeast corner of said N ½ of Section 24 and run South along the East line of said N ½ Section 24 a distance of 1,218.5 feet to the intersection with the Westerly line of said Railroad Company's 100 foot wide right-of-way and the Point of Beginning of the tract being described; thence S 18 degrees 52 minutes E, along said Westerly right-of-way line 733.7 feet to the intersection with the centerline of Grey Cloud Trail, extended Southeasterly from County Road 75; thence N 70 degrees 15 minutes W, along said extended centerline and the centerline of said road 1,160.2 feet; thence N 62 degrees 04 minutes W, along said centerline 247.8 feet; thence N 54 degrees 36 minutes W, along said centerline 1,347.9 feet; thence N 55 degrees 52 minutes W, along said centerline 1,012.06 feet to the centerline of County Road 75 extended; thence N 08 degrees 09 minutes W, along said centerline 1,390.01 feet to the intersection with the North line of said S 1/2 S 1/2 Section 13; thence East along said North line 2,339.89 feet to the intersection with said Westerly line of said Railroad Company's 100 foot wide right-of-way; thence S 18 degrees 52 minutes E, along said Westerly right-of-way line 2,682.7 feet to the point of Beginning and containing 143.04 acres, more or less.

County Highway 75 will remain a County Highway.

3. The parties to this proceeding are the Petitioner, Grey Cloud Island Township, the City of St. Paul Park and the City of Cottage Grove.

4. On January 3, 2000, the Office of Strategic and Long Range Planning held a hearing on the proposed petitions for annexation. The hearing was conducted by Christine Scotillo, Executive Director of Municipal Boundary Adjustments. The two petitions were consolidated for purposes of the hearing and the parties were directed to meet three times to attempt to resolve contested issues. The hearing was opened and immediately continued indefinitely.

5. On March 10, 2000, the Director of the Office of Strategic and Long Range Planning directed the parties to attend mediation through the Office of Dispute Resolution.

6. On June 27, 2000, the parties attended a mediation session, but reached an impasse.

7. On August 10, 2000, the Director of the Office of Strategic and Long Range Planning contacted the parties regarding their preference for a decision-making process in this matter. All parties indicated a desire to participate in a hearing pursuant to Minnesota Statutes Chapter 414 conducted by an administrative law judge.

8. On September 5, 2000, the Director of the Office of Strategic and Long Range Planning delegated to the Office of Administrative Hearings the "authority and responsibility to conduct hearings and issue orders under Minnesota Statutes Sec. 414.01 to 414.09, with respect to [A-6185 and A-6186]."

9. Due, timely and adequate legal notice of the hearing was published in *The South Washington County Bulletin* on October 4 and 11, 2000.[3]

10. On October 17, 2000 a hearing was commenced on the petitions for annexation. The hearing was held at St. Paul Park City Hall and continued on October 18, 20, 23-25, 2000.

11. At the commencement of the hearing, the Petitioner filed two motions with the Administrative Law Judge. The Petitioner moved to withdraw his petition to annex his property to St. Paul Park (petition A-6185), and moved to amend his petition to annex property to Cottage Grove (petition A-6186) to include the property identified in the St. Paul Park petition. That is, Petitioner is seeking to have all 600 acres of his property identified in the two petitions annexed to the City of Cottage Grove. Petitioner no longer wants any of his property annexed to St. Paul Park. Generally, the subject property is located south of the St. Paul Park/Grey Cloud Island Township boundary and west of the Township's boundary with Cottage Grove.

12. Administrative Law Judge Beverly Jones Heydinger determined that she would treat both motions as a motion to amend the Cottage Grove petition and took the matter under advisement pending the outcome of this decision. St. Paul Park had been neutral concerning Petitioner's initial petition to annex 200 acres to St. Paul Park. As a result of the Petitioner's motions, St. Paul Park took a position adverse to Petitioner and Cottage Grove. Otherwise, Petitioner's motions did not alter the parties of interest in this matter or the subject matter of the proceeding.

13. On October 30, 2000, St. Paul Park entered into a Joint Resolution for Orderly Annexation with Grey Cloud Island Township regarding the following property:

> Beginning at the intersection of the centerline of County Road 75 (being also known as Third Street and Division No. 4 of St. Paul Park and also being known as Grey Cloud Island Drive) with the extension Westerly of the South lot line of Lot 18, Block 117, Division No. 4 of St. Paul Park, thence Southerly along the centerline of said County Road 75 to its intersection with the centerline of Grey Cloud Trail; thence South and Easterly along the center line of said Grey Cloud Trail until its intersection with the East Boundary line of Grey Cloud Island Township; thence Northerly along said Eastern boundary line to its point of intersection with the boundary line of the City of St. Paul Park; thence Westerly on the common boundary between the City of St. Paul Park and Grey Cloud Island Township to the Westerly right-of-line of the Burlington Northern Railroad (being also known as the common boundary between the City of St. Paul Park and Grey Cloud Island Township); thence Northwesterly along said common boundary line to its intersection with the South line of

[3] Minn. Stat. § 414.09, subd. 1.

Block 113, Division No. 4 of St. Paul Park extended Easterly; then Westerly along the South lines of Blocks 113, 114, 115, 116 and 117, Division No. 4 of St. Paul Park extended Westerly to its intersection with County Road 75 and there terminating (being all within the Township of Grey Cloud Island, Washington County, Minnesota).

14. Public comments on the two initial petitions were received through November 3, 2000.[4]

15. By letter dated November 17, 2000, the Director of the Office of Strategic and Long Range Planning delegated the Joint Resolution for Orderly Annexation, OA-718/718-1, to the Office of Administrative Hearings to be considered as part of this proceeding.

16. The parties submitted post-hearing briefs on November 21, 2000. The record closed with the submissions of the parties' responsive briefs on November 28, 2000.

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

Petition for Annexation

Population

18. The current population of the proposed annexation area is 12 people. There are four houses on the subject property, all owned by the Petitioner. The Petitioner lives in one house, his son lives in another, and the Petitioner rents to farmer tenants in the other two houses. All four houses are located on the west side of County Road 75.[5]

19. Warren Isaacs owns a 1.2 acre parcel of property on the west side of County Road 75 that adjoins and is surrounded by the Petitioner's property in the proposed annexation area. Mr. Isaacs' property is currently used for light industry purposes.[6]

20. Grey Cloud Island Township has a current population of approximately 306 people and 125 households.[7]

21. St. Paul Park has a current population of approximately 5,000 people and 1,850 households.[8]

22. The Metropolitan Council projects that there will be approximately 300,000 additional households in the seven-county metropolitan area by 2020.[9]

23. The Metropolitan Council considers Cottage Grove to be one of the primary growth centers in the seven-county metropolitan area.[10]

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[4] Comments were received from James E. Hard and Kathleen C. Winters, dated October 26, 2000, and two from the Department of Natural Resources, dated October 19, 2000 and November 3, 2000.
[5] Exs. 23, 24; Nesvig at 54, 202.
[6] Isaacs at 341-354; Ex. 26.
[7] Exs. 31, 46; Nesvig at 202; Hanna at 724.
[8] Sittlow at 991; Ex. 46.
[9] Bluhm at 88-89, 114-115; Schlichting at 167.
[10] Exs. 52, 63; Bluhm at 89-90; Lindquist at 919-922.

24. Cottage Grove has a current population of approximately 32,633 people and 10,344 households. Cottage Grove projects that it will add an additional 12,000 people and 4,000 households by year 2020.[11]

25. The Grey Cloud Island Township 1999-2020 Comprehensive Plan forecasts only 15 additional households by year 2020.[12]

26. St. Paul Park's most recent comprehensive plan proposes adding 235 new households to the city by 2020, all within its existing boundaries.[13]

27. In 1998, the Metropolitan Council forecasted that Cottage Grove should plan for 20,000 additional people and 8,300 additional households by year 2020. The Council forecasted that St. Paul Park should plan for 150 fewer people and 260 additional households by 2020. And the Council forecasted that Grey Cloud Island Township should plan for 54 additional people and 49 additional households by 2020.[14]

28. In a January 6, 2000 Information Submission, James Uttley, Senior Planner with the Metropolitan Council's Planning and Growth Management Department, concluded that the cities of St. Paul Park and Cottage Grove "appear to have sufficient land available inside their current boundaries to accommodate their forecasted and planned growth consistent with Council policy without the proposed annexations." [15]

Quantity of land, terrain, soil conditions

29. A map prepared by Minnesota Planning-Municipal Boundary Adjustments, attached to this decision shows the subject property, all in Grey Cloud Island Township. Petition A-6185 includes approximately 200 acres owned by Petitioner both east and west of County Road 75, contiguous with St. Paul Park on the north and east. Petition A-6186 includes approximately 400 acres owned by Petitioner east and west of County Road 75.

30. The map also shows the approximately 340 acres included in the Joint Resolution for Orderly Annexation, all on the east side of County Road 75 to its intersection with Grey Cloud Trail, and then east of Grey Cloud Trail to the Township's border with Cottage Grove. The property included in the Joint Resolution excludes a small portion of the Township on its northern border with St. Paul Park that is included in petition A-6185 and includes approximately 17 acres owned by Marathon Ashland Petroleum, on the Township's eastern border with Cottage Grove.

31. County Road 75 runs through the property and is also referred to as Grey Cloud Island Drive.

32. Unless otherwise specified, further references to the "subject property" or "proposed annexation area" will include all property covered by the petitions and Joint Resolution. "Subject property west of County Road 75" includes the property described in Petitions A-6185 and A-6186 that lies west of County Road 75. "Subject property

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[11] Schlichting at 183; Lindquist at 902, 919-922; Exs. 46, 52, 55 at 9, 63, 67.
[12] Ex. 46.
[13] Ex. 46 at 6.
[14] Ex. 46 at 1-2; Schlichting at 167.
[15] Ex. 46 at 8; Pinel at 686-687.

east of County Road 75" includes the property described in either the petitions or the Joint Resolution that lies east of County Road 75 to the junction with Grey Cloud Trail, and then east of Grey Cloud Trail to the Township's border with Cottage Grove. The "northern portion" of the property includes the property described in petition A-6185; the "southern portion" refers to the property south of the northern portion.

33. Burlington Northern Railroad tracks run along the east border of the northern portion of the property and through the east side of the southern portion. The Marathon Ashland Petroleum property is east of the railroad tracks, extending east to the Township's border with Cottage Grove.

34. Marathon Ashland Petroleum has taken a neutral position with respect to the annexation petitions. In a letter dated October 17, 2000, James M. Nelson, Minnesota Division Manager for Marathon, informed the Cottage Grove City Administrator that Marathon "would be agreeable to annexation by St. Paul Park, Cottage Grove or remain in Grey Cloud Island Township." [16]

35. All of the subject property west of County Road 75 is within the Mississippi National River and Recreation Area/Critical Area Corridor. [17]

36. The Mississippi River and its backwaters run through the western border of the proposed annexation area.[18] Along this border, there are several undeveloped islands and a bay, described by the Petitioner as a "natural harbor."

37. Grey Cloud Island Township consists of approximately 1,800 acres.[19]

38. St. Paul Park consists of approximately 1,400 acres.[20]

39. Cottage Grove consists of approximately 21,500 acres.[21]

40. The two major types of soils in Grey Cloud Island Township are: (1) sandy over sandy, well-drained, dark-colored, dominant slope 0-6%; and (2) loamy over rock, well-drained, dark-colored, dominant slope 2-18%. The majority of the proposed annexation area consists of Dickman sandy loam soils, with 0 to 2 percent slopes. Bedrock is at or near the surface in some areas of the subject property.[22]

41. A significant portion of the proposed annexation area consists of hard bedrock. Such bedrock is located in a strip east of the Mississippi River, and in the southeasterly 60 percent of the property lying east of County Road 75 and north of Grey Cloud Island Trail. Although not prohibitive to development, greater bedrock depth results in higher development costs because constructing in hard rock is more labor intensive.[23]

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[16] Ex. 66.
[17] Ex. 34 at fig. 14-A.
[18] Ex. 31.
[19] Ex. 23.
[20] Sittlow at 991.
[21] Ex. 67.
[22] Lindquist at 906; Exs. 11, 23, 24, 25, 31, 34.
[23] Wanberg at 409-415; Exs. 34, 37, 38.

42. The proposed annexation area has an elevation of approximately 740 feet from the Mississippi River to County Road 75. Along the east side of the railroad tracks, the subject property's elevation rises to form a bluff line ranging from approximately 750 feet to 810 feet.[24]

43. Overall, the proposed annexation area is relatively flat, with the exception of the bluff line and a few areas with slopes ranging between 12-18 percent or greater than 18 percent. Portions of the proposed annexation area west of County Road 75 have both slopes ranging between 12-18 percent and slopes greater than 18 percent. Generally the higher slopes are found immediately east of the Mississippi River. And the slopes ranging between 12-18 percent are located southeast of the bay or "natural harbor". Within the Critical Area Corridor, development can not occur on slopes exceeding 18 percent.[25]

44. The western border of the proposed annexation area is distinguished by a sheer cliff of limestone, known as "Robinson's Rocks", that rises roughly 50 feet above the Mississippi River and runs along parts of the shoreline of Grey Cloud Island Township. Along the bluffs immediately east of the Mississippi River, the underlying bedrock is at grade level. Moving easterly from the Mississippi shoreline, soil begins to cover the bedrock at an ever-increasing depth.[26]

45. The proposed annexation area west of County Road 75 includes the following natural communities: silver maple floodplain, dry cliff, river bed communities, red cedar glades, and dry sand dune prairie. None of these communities are located on the east side of County Road 75.[27]

Contiguity of boundaries

46. Grey Cloud Island Township is located in the southwestern corner of Washington County along the Mississippi River.

47. The proposed annexation area is bordered on the west by the Mississippi River, on the north and northeast by St. Paul Park, on the southeast by Cottage Grove, and on the south by Grey Cloud Island Township.[28]

48. None of the subject property is presently part of an incorporated city.

49. The proposed annexation area is contiguous to St. Paul Park's existing MUSA line. MUSA stands for Metropolitan Urban Service Area and existing MUSA boundaries delineate those areas that currently receive or are about to be connected to urban water and sewer services. The proposed annexation area is west of but not contiguous to the existing MUSA line in Cottage Grove.[29]

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[24] Roos at 839, 861-866; Ex. 10.
[25] Wanberg at 408-409, 486-487; Exs. 10, 29, 34 at fig. 2.
[26] Exs. 25, 31, 34; Nesvig at 221-222; Wanberg at 407-408; Adams at 812-814.
[27] Ex. 36.
[28] Exs. 9, 46, 52.
[29] Wanberg at 398-399, 402; Pinel at 702; Ex. 46 at 2.

50. If the entire proposed annexation area were annexed to Cottage Grove, Grey Cloud Island Township would no longer share a common boundary with St. Paul Park. [30]

51. Grey Cloud Island Township does not want to lose its common boundary with St. Paul Park. The Township receives its police and fire protection services from St. Paul Park and St. Paul Park is the mailing address for the Township. In addition, virtually all access to the Township by road is through St. Paul Park. [31]

52. On August 24, 2000, the Grey Cloud Island Township Board mailed a survey to all of the households in the Township asking residents for their opinion regarding annexation of all or part of the Township to either St. Paul Park or Cottage Grove. The Board received 86 responses. The majority of the responses opposed annexation and supported preserving the Township's rural character. When asked to choose between St. Paul Park and Cottage Grove if annexation was required, 72 of 78 respondents chose St. Paul Park.[32]

Present development pattern, planning, intended land uses

53. Petitioner is a resident of Grey Cloud Island Township and the past chair of the Grey Cloud Island Township Board. The Petitioner would like to develop his property for a mix of commercial and residential use. In particular, Petitioner wants to build a marina along the Mississippi River on shore land surrounding a natural bay. In addition, the Petitioner is seeking to develop 500 of his 600 acres at urban densities. Without municipal sewer and water services, the Petitioner's ability to develop his property is limited.[33]

54. The Metropolitan Council recommends three dwelling units per acre as a goal for urban density. The Metropolitan Council identifies one unit per 10 acres as rural, and one unit per 40 acres as agricultural.[34]

55. In 1973, the Minnesota Legislature enacted the Critical Areas Act (Minn. Stat. ch. 116G) to plan and manage resource areas of greater than local significance. After a series of studies and public hearings, the Metropolitan Council recommended that a segment of the Mississippi River in the Twin City metropolitan area be designated a Critical Area. On October 18, 1976, the Governor of Minnesota signed Executive Order No. 130, which established the Mississippi River Corridor Critical Area.[35]

56. In 1979, the Governor of Minnesota signed Executive Order 79-19. This order defined the purposes of the Critical Area Plan to include: protecting and preserving a unique and valuable state and regional resource for the benefit of the health, safety and welfare of the citizens for the state, region and nation; preventing and mitigating irreversible damage to this state, regional and national resource; preserving and enhancing its natural, aesthetic, cultural, and historical value for the public use;

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[30] Hanna at 718-719.
[31] Adams at 821.
[32] Ex. 48.
[33] Nesvig at 33, 40, 138-141, 276; Exs. 23, 24.
[34] Bluhm at 73-74.
[35] Ex. 34 at 18-19.

protecting and preserving the river as an essential element in the national, state and regional transportation, sewer and water, and recreational systems; and protecting and preserving the biological and ecological functions of the corridor.[36]

57. Proposals for development in the Critical Area Corridor must be consistent with the provisions of Executive Order 79-19, including: preserving the open, scenic, and natural characteristics and ecological and economic functions of the lands and water within the Rural Open Space District; protecting bluffs greater than 18% and conditions for development of bluffs between 12 and 18%; minimizing runoff; minimizing site alteration; site plan review and approval requirements; structure site and location regulations to ensure riverbanks, bluffs and scenic overlooks remain in their natural state; and retention of existing vegetation and landscaping.[37]

58. All of the land in the proposed annexation area lying west of County Road 75 is within the Mississippi National River and Recreation Area (MNRRA)/Critical Area Corridor. Development proposals for property within this area must be consistent with the Critical Area ordinances and are subject to approval by the Minnesota Department of Natural Resources ("DNR").[38]

59. The Critical Area Corridor is divided up into four distinct districts, each with its own set of geographic areas within the corridor and its own set of guidelines. The corridor of land located within Grey Cloud Island Township, is classified as part of the "Rural Open Space District". The Rural Open Space District policies provide that "lands within this district shall be used and developed to preserve their open, scenic and natural characteristics and ecological and economic functions."[39]

60. One of the main purposes for designating the Critical Area Corridor was to prevent and mitigate irreversible damage to the area from unwise use. One of the goals of designating an area a Rural Open Space District is to prevent a ribbon of dense housing development along the corridor.[40]

61. The Rural Open Space District designation can be changed by amendment only with approval from the Minnesota Department of Natural Resources. Any changes to plans and ordinances affecting Critical Area lands, including proposed density or zoning changes, are subject to review by the Metropolitan Council and DNR approval.[41]

62. The proposed annexation area is located within the illustrative 2020 MUSA line.[42] The illustrative MUSA line gives local communities a guide for planning urban services and is subject to change as each community's comprehensive plan is approved.[43]

63. Grey Cloud Island Township and Washington County have concurrent land use and zoning responsibilities for the property within the Township. The Township

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[36] Exs. 34 at 19; 42.
[37] Ex. 42.
[38] Nesvig at 235-236; Wanberg at 404, 444, 448; Ex. 34 at 18-30 and fig. 14A; Exs. 42, 44, 46 at 8.
[39] Fecht at 609; Exs. 34 at 21-22, 42, 43, 46 at 8, *quoting* Executive Order 79-19.
[40] Fecht at 611, 621.
[41] Fecht at 627; Ex. 34 at 24.
[42] Exs. 12, 22; Pinel at 694.
[43] Wanberg at 390-396; Pinel at 680-681.

land use and development plans must be consistent with or at least as restrictive as the County's comprehensive plan and zoning regulations.[44]

64. Under Washington County's 2015 Comprehensive Plan, which reflects generally the Township's current plans, there are two land use designations within Grey Cloud Island Township. The predominant land use planned for Township is "rural residential", which is defined as having a density of 16 dwelling units per 40 acres. The other land use is commercial/industrial.[45]

65. Washington County has taken no formal position with respect to the annexation petitions.[46]

66. Grey Cloud Island Township's predominant land uses include single-family residential (24 percent of total area) and undeveloped, including agricultural and vacant (62 percent). In its 1999-2020 comprehensive plan, the Township proposes a 1 dwelling unit in 10 acres density in its undeveloped portions, including the proposed annexation area.[47]

67. Grey Cloud Island Township currently has no retail, commercial or business development in the proposed annexation area.[48] There is a large mining operation owned by CAMAS/Aggregate Industries in another portion of the Township. Mining in the Township is expected to continue for an additional 20 to 40 years.[49]

68. Grey Cloud Island Township's existing land use for the proposed annexation area located east of County Road 75 is agriculture. The existing land use for the proposed annexation area located west of County Road 75 is residential and vacant.[50]

69. Under the Metropolitan Council's Regional Growth Strategy, adopted on December 19, 1996, all of Grey Cloud Island Township was within the Council's "urban reserve" designation. "Urban reserve" is defined by the Metropolitan Council as that portion of the region that is reserved for future urbanization, if needed, through 2040. Council policy encourages that "urban reserve" lands be kept in agricultural use until it is needed for urbanization, with non-farm residential development discouraged and non-farm residential densities limited to no more than one dwelling per 40 acres. The "urban reserve" designation is given to lands situated between the existing MUSA boundary and areas designated for permanent rural or permanent agricultural uses.[51]

70. Pursuant to Grey Cloud Island Township's 1999-2020 Comprehensive Plan, which was recently approved by the Metropolitan Council, no extension of Metropolitan Urban Services into the Township is proposed. Therefore, the Metropolitan Council is expected to change its Regional Growth Strategy designation for the entire Township from "urban reserve" to "permanent rural". The Metropolitan Council defines "permanent rural" lands as those that are "sparsely developed with a mix of farm and

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[44] Harper at 571-572.
[45] Harper at 573; Ex. 39.
[46] Harper at 584.
[47] Ex. 46 at 6.
[48] Nesvig at 137-138.
[49] Ex. 34, Fig. 10.
[50] Ex. 34 at 23 and fig. 12.
[51] Wanberg at 403-404; Pinel at 679-681, 694; Exs. 22, 46 at 2.

nonfarm rural uses that will not require urban levels of service for the foreseeable future and where urban levels of development are strongly discouraged." Nonfarm residential uses are limited to densities of not more than 1 dwelling per 10 acres. [52]

71. Grey Cloud Island Township's planned future land use for the proposed annexation area is rural residential. The densities range between 1 dwelling unit in 2.5 acres to 1 dwelling unit in 10 acres, depending on existing development patterns. The planned future land use for the majority of the proposed annexation area on either side of County Road 75 is 1 dwelling unit per 10 acres. There are two pockets of higher density development in the Township, in the northeast corner (east of County Road 75) and in the southwest corner (west of County Road 75).[53] However, as long as this land is within the Township's jurisdiction, the Township will allow future rural residential development at a density of 1 dwelling per 10 acres.[54]

72. Grey Cloud Island Township's comprehensive plan envisions as a long range possibility, annexation of Petitioner's property to a "neighboring community" and extension of sanitary sewer and water into this part of the Township. The area west of County Road 75 will remain subject to Critical Area requirements whether or not annexation to another city occurs.[55]

73. Under Grey Cloud Island Township's comprehensive plan, the northeast and southwest corners of the proposed annexation area are currently zoned residential, while the remaining land located on either side of County Road 75 is zoned agricultural/industrial. The present agricultural/industrial zoning district will be removed as it is no longer a recognized use in the Comprehensive Plan.[56]

74. In its Comprehensive Plan, Grey Cloud Island Township included a requirement that landowners wishing to pursue urban development prepare a "thorough feasibility study" demonstrating "both physically and financially how development can occur" prior to seeking authorization for annexation.[57]

75. Grey Cloud Island Township has no plan to allow urban density development along the river bluff in the Critical Area Corridor. The Township maintains that this land should stay in the Township and be kept rural in character. According to the Township, urban density development on the river bluff would forever destroy the aesthetic and real property values along the adjoining river corridor.[58]

76. The proposed annexation area is located within the 2020 illustrative MUSA boundary line approved by the Metropolitan Council. This demarcation is established by the Metropolitan Council and is intended to be used by local units of government to establish future boundaries and potential areas for additional growth. It is projected that areas within the illustrative MUSA line will have water and sewer treatment services by 2020, but it is subject to change as the local governments develop their comprehensive

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[52] Pinel at 681, 687-688, 691-692; Ex. 34 at 9; Ex. 46 at 3, 9.
[53] Most of this property is outside the proposed annexation area.
[54] Wanberg at 397; Ex. 34 at 9, 12, 24, and fig. 14.
[55] Ex. 34 at 12.
[56] Exs. 18, 31, 34 at 31 and fig. 15; Nesvig at 145.
[57] Ex. 34 at 12.
[58] Ex 31 attachment.

plans. The Illustrative MUSA line is not a guarantee that all of the property within the boundary will in fact obtain urban services by 2020.[59]

77. The intent of establishing the MUSA boundary is to have orderly, staged development moving from the existing MUSA line outward. While fingers of growth are permitted, "islands" of development are discouraged.[60]

78. Under its current Comprehensive Plan, Cottage Grove does not show its MUSA boundary contiguous to Petitioner's property. Instead, there is a gap of approximately ½ mile between Cottage Grove's current MUSA line and the common boundary with the proposed annexation area. The proposed changes to the MUSA line in Cottage Grove's current 2020 Comprehensive Plan are primarily in the northwest portion of the city, east of Highway 61.[61] If Cottage Grove immediately developed the proposed annexation area, it would have to leap over undeveloped land.

79. Exhibit 60 shows Cottage Grove's development plans. The area to the east of the subject property is classified as agricultural, industrial or low density residential, with possible limited medium density residential, but with no planned extension of urban services contiguous to the subject property.[62]

80. St. Paul Park's current MUSA line is the common boundary between St. Paul Park and Grey Cloud Island Township. The MUSA line is contiguous to the north and northeast boundary of the proposed annexation area. Thus, an extension of urban services south from St. Paul Park into the proposed annexation area would be contiguous and would not be considered "leapfrogging" development or an "island".[63]

81. In its current Comprehensive Plan, which was approved by the Metropolitan Council in September 2000, Cottage Grove has identified seven transition zones for planned future development based on existing or potential land uses. None of these identified areas are contiguous to Grey Cloud Island Township. There is a "Transition Zone 2" for land currently agricultural but which soon may become low to medium density residential. This area immediately adjoins the current MUSA's southwest corner and extends the line further west. However, the bluff line will be a natural barrier to further immediate westward expansion.[64]

82. The majority of residential development in Cottage Grove has progressed in a west-to-east direction, with virtually all of the development located on the east side of Highway 61. By contrast, growth of Cottage Grove's commercial and industrial area is projected to occur on the west side of Highway 61, filling in the area between Highway 61 and current residential development.[65]

83. There is a petroleum tank farm located between the subject property and the closest residential development in Cottage Grove. The tank farm will interrupt any

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[59] Exs. 12, 22; Nesvig at 47-51; Bluhm at 66-69; 72, 76; Schlichting at 170; Pinel at 688.
[60] Bluhm at 90; Pinel at 681-682.
[61] Bluhm at 91, 111-113; Schlichting at 175; Lindquist at 945; Ex. 55 at 12.
[62] See also Ex. 46 at 7.
[63] Bluhm at 91, 111-112; Pinel at 688.
[64] Bluhm at 92; Schlichting at 189-190, 196-197; Ex. 55 at 29-46.
[65] Ex. 55 at 10, 15.

further residential development west from Cottage Grove. Cottage Grove anticipates this industrial use to continue beyond 2020.[66]

84. St. Paul Park completed its Comprehensive Plan in 1999.[67]

85. St. Paul Park's predominant land uses include single-family residential (42 percent of total area), roadways (15 percent), and heavy industry (13 percent). Residential density in St. Paul Park is 3 dwelling units per acre. St. Paul Park currently has 63 acres of vacant property, virtually all of which is in the southwest area adjacent to the proposed annexation area. The boundaries of this area are generally south of Eighth Avenue to the Grey Cloud Island Township border and west of Second Street to the Mississippi River. This area is contiguous to the northwest portion of the proposed annexation area. Constraints to development in the southwest area include high bedrock and the need to provide appropriate open space in the Critical Area.[68]

86. In a submission addressing the statutory factors set out in Minnesota Statutes § 414.031, subd. 4, Cottage Grove proposes to develop the annexation area parcel at urban densities in the eastern portion of the site consistent with the residential development existing and planned for western Cottage Grove. Less dense development would be expected in the west portion of the annexation parcel, adjacent to the Mississippi River, consistent with the residential development pattern found in Cottage Grove along the river.[69]

87. Like Grey Cloud Island Township, Cottage Grove does not allow for urban density development in the Critical Area Corridor. Instead, only densities on average of 1 dwelling unit in 10 acres are permitted.[70]

88. The area east of County Road 75 is the natural corridor for future development.

Transportation network

89. State Trunk Highway 61 is a principal artery in the regional transportation system and runs northwest/southeast through Cottage Grove and along the eastern border of St. Paul Park. It is approximately one mile to the east of the proposed annexation area.[71]

90. A very limited roadway system provides access to Grey Cloud Island Township. County Road 75 is the only regional highway in the Township. As a regional collector, it connects the Township with St. Paul Park to the north. It extends from Third Street in St. Paul Park, and runs north/south through the Township, including the proposed annexation area.[72]

91. Access to Grey Cloud Island Township from Cottage Grove is limited by the location of the Burlington Northern Railroad tracks. The tracks are a significant barrier

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[66] Ex. 60.
[67] Roos at 830-831.
[68] Ex. 46 at 6; Sittlow at 993, 1010; Ex. 51.
[69] Lindquist at 911; Ex. 52 at (d).
[70] Lindquist at 949.
[71] Ex. 46 at 4.
[72] Wanberg at 426-428; Exs. 31, 34 at 5, 16, 46 at 4.

to residential development from Cottage Grove. Cottage Grove does not foresee approving any more at-grade rail/roadway crossings without extensive exploration into other, safer alternatives. The Railroad rarely approves new at-grade corssings.[73] Cottage Grove's existing 103rd Street route under the railroad bridge needs to be replaced or improved, or a new roadway built to provide access the southwest section of the City.[74] This is the only direct road access from Cottage Grove to Grey Cloud Island Township.

92. Presently there are approximately five miles of minor Township roads in Grey Cloud Island Township. Less than 10 miles of roadways are paved in Grey Cloud Island Township. County Road 75 makes up approximately three miles of paved roadway in the Township.[75]

93. Grey Cloud Island Township believes that urban density development in the proposed annexation area east of County Road 75 would overtax existing road access to the area.[76]

94. The transportation system, as it exists currently, could not support Petitioner's proposed development of 500 acres at urban density levels (3 units per one acre). If development of the proposed annexation area east of County Road 75 was staged in an orderly fashion, however, improvements to the roadways could be undertaken to correspond with the development.[77]

95. The existing roadways in Grey Cloud Island Township and St. Paul Park would be sufficient to handle approximately 500 additional homes in the northern 200 acres of the proposed annexation area.[78]

Existing governmental services

96. Grey Cloud Island Township contracts with St. Paul Park for police and fire protection services.[79]

97. The St. Paul Park police department provides Grey Cloud Island Township with basic police and patrol services. The St. Paul Park police department has eight full-time employees, including the police chief. Response times to calls for service from Grey Cloud Island Township average two to three minutes.[80]

98. St. Paul Park has provided fire protection service to Grey Cloud Island Township since approximately 1926. St. Paul Park has a 27-member volunteer (paid on-call) fire department. Currently, the St. Paul Park fire department has eight pieces of fire fighting equipment. The response time to calls for service from Grey Cloud Island Township averages between four to six minutes.[81]

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[73] Wanberg at 434.
[74] Ex. 55 at 59.
[75] Nesvig at 135-136; Ex. 31.
[76] Ex. 31 attachment; Nesvig at 276-279.
[77] Wanberg at 433; Sittlow at 1016.
[78] Roos at 846.
[79] Nesvig at 223; Monahan at 1040-1041; Gerry at 762.
[80] Monahan at 1041-1042.
[81] Gerry at 760-761.

99. On a scale of 1-10 with 1 being the best, St. Paul Park carries a fire insurance (ISO) rating of 5. Cottage Grove carries a fire insurance (ISO) rating of 4. Grey Cloud Island Township carries a fire insurance (ISO) rating of 9. [82]

100. Cottage Grove provides Grey Cloud Island Township with emergency medical/ambulance services.[83]

101. Washington County provides Grey Cloud Island Township with sewer inspection services.[84]

102. Grey Cloud Island Township provides the following services to its residents: street maintenance, administrative services, and recreational services. Animal control and building inspection services are provided to the Township on a contractural basis with neighboring communities.[85]

103. Grey Cloud Island Township provides no water, sanitary sewer or wastewater treatment services. Township residents receive water and sewer services from private wells and septic systems.[86]

104. Washington County has a shore land management ordinance and, pursuant to this ordinance, it reviews and approves the Township's zoning and regulation of those portions of the subject property that are located within the shore land of the Mississippi River. A municipality's shore land ordinance is subject to review by the DNR and must meet minimum standards and guidelines set forth in Minnesota Rules.[87]

Environmental problems

105. The Mississippi River and its adjacent Corridor were designated a state Critical Area in 1976, reaffirmed through Executive Order 79-19 in 1979, and made permanently a Critical Area by action of the Metropolitan Council in 1979. The Critical Area Corridor includes, for purposes of this matter, the river and lands riverward of the center line of County Road 75 and is classified as Rural Open Space District.[88]

106. The purposes of designating the Mississippi River as a Critical Area include: protecting and preserving a unique state and regional resource for the benefit of the citizens of the state, region and nation; preventing and mitigating irreversible damage to this resource; preserving and enhancing its natural, aesthetic, cultural, and historical value for public use; protecting and preserving the river as an essential element in the national, state and recreational systems; and protecting and preserving the biological and ecological functions of the corridor.[89]

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[82] Nesvig at 295; Dally at 1072-1073.
[83] Nesvig at 223; Dally at 1071, 1075.
[84] Ex. 34 at 16.
[85] Exs. 31, 34 at 6; Monahan at 1043.
[86] Ex. 31.
[87] Nesvig at 231-233; Harper at 579-580, 591; Fecht at 652-655.
[88] Exs. 32, 42.
[89] Exs. 32, 42.

107. All of the proposed annexation area located west of County Road 75 is located in the Critical Area Corridor. The property located east of County Road 75 is not in the Critical Area Corridor.[90]

108. Urban density development of the type proposed by the Petitioner might endanger a large area of wildlife habitat within the river corridor.[91]

109. There has been no environmental impact study regarding the Petitioner's plan to develop a marina by dredging the bay in the river backwaters and blasting surrounding bedrock.[92]

Fiscal Impact

110. Grey Cloud Island Township's net tax capacity for 1999 was $324,618. Of that amount, a portion is in a segregated fund created in 1985 pursuant to a contract agreement between the Township and the JL Shiely mining company. The Township may use the interest earned on the amount in the segregated fund for Township expenses. The Township also has approximately $86,000 in operating cash.[93]

111. Grey Cloud Island Township's annual budget for year 2000 was $106,000. The Township's total property tax payable in year 2000 was approximately $47,000. Of that amount, the proposed annexation area accounted for approximately $1,660. The Township makes up the remainder of its budget from interest earned on investments, lease payments and state aid. The Township's tax rate is 14.3 percent and it currently has no bonded indebtedness.[94]

112. If the proposed annexation is granted, Grey Cloud Island Township will lose approximately $1,600 in tax benefit from the Petitioner's property. This amount represents approximately 1.6 percent of the Township's total budget. The Township will save some money, however, by no longer having to provide services to the area. As a result, if the subject area was annexed to either St. Paul Park or Cottage Grove, the fiscal impact on Grey Cloud Island Township would be minimal.[95]

113. Grey Cloud Island Township board and planning commission members believe that the Township will remain financially viable without the subject property. The Township's objections to the annexation petitions are not revenue based.[96]

114. Cottage Grove's 1999 net tax capacity was $17,906,209. Cottage Grove's urban tax rate is 29.6 percent and its rural tax rate is 70 percent of its urban tax rate. Cottage Grove's bonded indebtedness for 1999 was approximately $12 million and its net debt ratio was about $24 million.[97]

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[90] Exs. 31, 34.
[91] Exs. 31, 34 at 24-27, 42; Public comment letter from K. Wallace, Regional Director, MN DNR, 10-19-00.
[92] Ex. 31 at 5; Nesvig at 323-324.
[93] Ex. 23; Nesvig at 133-134.
[94] Exs. 14, 23; Nesvig at 133-134, 363; Hanna at 733.
[95] Nesvig at 211; Ex. 23.
[96] Ex. 31 at 6; Adams at 806.
[97] Schroeder at 1110-1112; Exs. 52, 63, 67.

School districts

115. South Washington County Independent School District No. 833 is the seventh largest school district in the state with approximately 15,300 students enrolled currently. The school district serves St. Paul Park, Grey Cloud Island Township and Cottage Grove.[98]

116. Except for the schools serving Cottage Grove on the north side of Highway 61, the existing elementary and high schools in St. Paul Park and Cottage Grove have capacity for more students. In addition, a new elementary (K-6) school with the capacity for 700 students is being constructed in Cottage Grove and will open in 2002.[99]

117. If the proposed annexation area is developed at 1,500 dwelling units on 500 acres, the anticipated new student population generated from this development is 750 students. The South Washington County School District is capable of absorbing the anticipated new student population.[100]

Adequacy of town government to deliver services

118. Grey Cloud Island Township does not plan to provide sewage treatment services to the proposed annexation area within the next 20 years.[101]

119. Grey Cloud Island Township does not desire nor can it assume the responsibilities associated with urban development and the related urban services.[102]

120. Grey Cloud Island Township contracts with St. Paul Park for police and fire protection services, with Washington County for snowplowing, road maintenance, and sewer inspection, and with Cottage Grove for emergency medical services.[103]

121. Grey Cloud Island Township provides no water, sanitary sewer or wastewater treatment services. The Township receives its water and sewer services from private wells and septic systems.[104]

122. Grey Cloud Island Township is managed by a three-member board of supervisors and the Township employs a part-time clerk and treasurer.[105]

123. Grey Cloud Island Township can provide adequate government services to areas used or developed for agricultural, open space and rural residential purposes. It can not provide adequate services to intensively developed areas with residential, commercial, industrial or governmental purposes.

Cottage Grove's ability to provide services

124. The Cottage Grove Fire Department provides emergency medical services to Cottage Grove, St. Paul Park, Newport and Grey Cloud Island Township. The Fire

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[98] Nesvig at 134-135; Hoke at 1053; Ex. 52.
[99] Hoke at 1053-1054.
[100] Hoke at 1057; 1062-1063, 1066-1067.
[101] Ex. 34 at 9.
[102] Ex. 28.
[103] Nesvig at 135; Hanna at 733; Gerry at 765; Ex. 34 at 16.
[104] Ex. 31.
[105] Nesvig at 135.

Department employs three full-time fire fighters and has 49 paid on-call volunteers. The Cottage Grove Fire Department has 17 fire fighting vehicles and four ambulances.[106]

125. Cottage Grove employs 36 full-time peace officers, with 24 certified as paramedics.[107]

126. Cottage Grove's Public Works Department employs 27 public service workers who repair and maintain public infrastructure such as streets, water and sewer mains, water towers and pumping stations.[108]

127. Cottage Grove is capable of providing police, fire protection and street maintenance services to the proposed annexation area.[109]

128. Cottage Grove operates a wastewater treatment facility that currently has a treatment capacity of 2.5 million gallons per day. [110]

129. The Cottage Grove wastewater treatment plant is currently approaching its capacity and is undergoing an expansion that will be completed by 2002. Once the expansion is completed, Cottage Grove will have a treatment capacity of 10-15 million gallons per day and it will be able to service the growth projected for both the cities of Cottage Grove and Woodbury through 2020. A further expansion of the plant will increase its capacity to 20 million gallons per day by 2040.[111]

130. The Cottage Grove wastewater treatment plant is located in the southeast part of the city near the Mississippi River.[112]

131. Currently, Cottage Grove's closet sewer line to the lower 400 acres of the proposed annexation area is located southwest of Highway 61. There is no intention on the part of Cottage Grove, however, to service the proposed annexation area from those lines. Instead, a new southwest interceptor would be installed to service that property. [113]

132. Cottage Grove has existing water lines and planned water service in proximity to the proposed annexation area. If annexation occurred, Cottage Grove would most likely extend water service to the subject property from 85th street.[114]

133. Cottage Grove has 28 locally owned and operated park facilities. The City also operates a municipal pool, ice arena, and 18-hole golf course. Two regional parks, Cottage Grove Ravine Park and the Dunes Scientific and Natural Area, are also located within the City's borders.[115]

134. Cottage Grove has developed an overlay district for environmentally sensitive areas. The overlay district covers areas within Cottage Grove that contain

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[106] Dally at 1070-1072, 1077.
[107] Ex. 52.
[108] Ex. 52.
[109] Lindquist at 931; Schroeder at 1128-1129; Ex. 52.
[110] Bluhm at 81; Ex. 67.
[111] Exs. 46 at 5, 67; Bluhm at 65-66, 70-71, 81-82; Lindquist at 930.
[112] Ex. 46 at 5; Bluhm at 65.
[113] Lindquist 929-930; Ex. 59.
[114] Lindquist at 925-926; Bourdon at 1086; Ex. 58.
[115] Exs. 52, 55 at 76-88.

steep slopes, flood plain, or are located along the Mississippi River. Cottage Grove is considering development criteria for the overlay district that impose more stringent standards for grading, erosion control and hard surface coverage.[116]

St. Paul Park's ability to provide services

135. St. Paul Park is willing and able to continue providing police and fire protection services to the proposed annexation area and the remaining Grey Cloud Island Township.[117]

136. St. Paul Park has a 750,000 gallon elevated water tank and a 500,000 gallon elevated water tank within the city. The 500,000 gallon tank is located five city blocks from the northern 200 acres of the proposed annexation area. In addition, St. Paul Park has a 100,000 gallon reservoir located just to the east of Highway 61.[118]

137. St. Paul Park's water supply and distribution system is capable of servicing the northern 200 acres of the proposed annexation area. The remaining 400 acres could also be serviced if St. Paul Park adds an additional well.[119]

138. St. Paul Park obtains its wastewater treatment service from a metropolitan wastewater treatment plant located in the City of St. Paul.[120]

139. In addition to St. Paul Park, the St. Paul wastewater treatment plant services the cities of Newport and Inver Grove Heights.[121]

140. The northern edge of the proposed annexation area is approximately eight city blocks (less than one mile) away from a main sewer line in St. Paul Park.[122]

141. The City of St. Paul Park has a 10-inch sewer main that extends into a 33-inch interceptor located at Broadway and Second Street. As designed, the interceptor has the ability to provide urban services to the entire city of St. Paul Park and to areas outside of St. Paul Park, including all of the subject property.[123]

142. Preliminary planning has been done to extend the sewer south from the interceptor along Main Street. Such an extension would be adequate to serve the entire 600 acres.[124]

143. Water and sewer lines can be routed under railroad tracks, and the railroads and cities generally cooperate in such construction to avoid interfering with train traffic.[125]

144. St. Paul Park provides recreation areas to its residents, including Lions Levee Park and Riverside Park. There is access to a marina and boat launch.[126]

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[116] Lindquist at 906-907; Ex. 55 at 27.
[117] Gerry at 765-766; Monahan at 1047-1048.
[118] Roos at 840-841; Sittlow at 1001-1002; Ex. 50.
[119] Roos at 843, 867; Sittlow at 1002-1003.
[120] Ex. 46 at 5; Bluhm at 65.
[121] Bluhm at 101.
[122] Roos at 834; Ex. 51.
[123] Testimony of Bluhm at 78-80; Roos at 835-838; Sittlow at 997-998.
[124] Roos at 837-838.
[125] Roos at 868, 887.
[126] Sittlow at 1010.

145. As part of their Comprehensive Plans, Cottage Grove, St. Paul Park and Grey Cloud Island Township must provide a detailed land use plan and public facilities plan and an implementation program, including a capital improvement program for transportation, sewers, parks, water supply and open space facilities.[127]

Whether governmental services can best be provided through annexation

146. The subject property west of County Road 75 is in the Critical Area Corridor and is not about to become urban or suburban. Grey Cloud Island Township can best protect the permanent rural character of this property. The Township is unable to provide urban services.

147. The northern portion of the subject property east of County Road 75 is about to become urban or suburban, and it is in the best interest of the southern portion to also be included in the annexed area. St. Paul Park is in the best position to extend full municipal water and sewer services to the subject property east of County Road 75.

148. St. Paul Park and Cottage Grove provide adequate services to current residents. Both have considered their current and projected capacity to provide sewer and water to the subject property. Cottage Grove has more administrative structure, including a planning staff and engineer. St. Paul Park contracts for these services as needed. Both cities' position is that they can manage urban development of the subject property without adding significantly to their operating expenses.

149. Both Cottage Grove and St. Paul park must have 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, subject to review and approval by the Metropolitan Council.

Ability of remaining township to continue

150. Annexation of the eastern portion of the subject property will not have a detrimental impact on the remainder of the Township's ability to carry on governmental functions.[128]

151. St. Paul Park plans to continue to provide police and fire protection services to the remainder of the Township if the annexation petition is granted.[129]

152. Cottage Grove plans to continue to provide emergency medical/ambulance services.[130]

153. Annexation of the eastern portion of the subject property will leave a small amount of property north of that portion remaining in the Township. That portion was not part of either petition or the Joint Resolution. This area will retain a small land connection to the Township but could be annexed by St. Paul Park in a separate proceeding. See attached map.

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[127] Minn. Stat. § 473.859.
[128] Adams at 806.
[129] Hanna at 733-734; Gerry at 765-766.
[130] Dally at 1074-1075.

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

CONCLUSIONS

1. The Administrative Law Judge has jurisdiction in this matter through the Office of Strategic and Long Range Planning under Minnesota Statutes §§ 414.01, 414.031, 414.11, and 414.12.

2. Proper notice of the hearing in this matter was given.

3. The northern portion of the subject property east of County Road 75 described in petition A-6185, is about to become urban or suburban in character.

4. Annexation of the northern portion of the subject property east of County Road 75 to St. Paul Park is in the best interest of that area.

5. Annexation to St. Paul Park of the southern portion of the subject property east of County Road 75, described in petition A-6186, and the Joint Resolution is in the best interest of that area.

6. St. Paul Park is in the best position to provide water and sanitary sewer services to the subject property east of County Road 75.

7. Any increase in revenue to St. Paul Park will bear a reasonable relationship to the monetary value of the benefits conferred upon the property to be annexed.

8. All of the subject property west of County Road 75 included in both petitions and located within the Critical Area Corridor, is primarily rural and will not become urban or suburban within the next 20 years.

9. It is in the best interest of the subject property west of County Road 75 to remain within Grey Cloud Island Township.

10. The remainder of Grey Cloud Island Township will not suffer undue hardship by virtue of the annexation of the subject property east of County Road 75 to St. Paul Park.

11. 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.

12. 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 foregoing Conclusions, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED:

1. That the Petitioner's motion to withdraw A-6185 and to amend A-6186 is DENIED.

2. That Grey Cloud Island Township and the city of St. Paul Park's joint motion to dismiss the petitions for annexation and to order annexation pursuant to Minnesota Statutes § 414.0325, subd. 1 is DENIED.

3. That Petitioner's motion to consolidate the petitions for annexation and Joint Resolution for Orderly Annexation is GRANTED.

4. That the Petitioner's property, described in petitions A-6185 and A-6186, located east of County Road 75, and the additional property owned by Marathon Ashland Petroleum and included in the Joint Resolution for Orderly Annexation is annexed to the City of St. Paul Park.

5. That the territory to be annexed to the City of St. Paul Park is described as follows:

> Beginning at the intersection of the centerline of County Road 75 (being also known as Third Street and Division No. 4 of St. Paul Park and also being known as Grey Cloud Island Drive) with the extension Westerly of the South lot line of Lot 18, Block 117, Division No. 4 of St. Paul Park, thence Southerly along the centerline of said County Road 75 to its intersection with the centerline of Grey Cloud Trail; thence South and Easterly along the center line of said Grey Cloud Trail until its intersection with the East Boundary line of Grey Cloud Island Township; thence Northerly along said Eastern boundary line to its point of intersection with the boundary line of the City of St. Paul Park; thence Westerly on the common boundary between the City of St. Paul Park and Grey Cloud Island Township to the Westerly right-of-line of the Burlington Northern Railroad (being also known as the common boundary between the City of St. Paul Park and Grey Cloud Island Township); thence Northwesterly along said common boundary line to its intersection with the North line of Block 113, Division No. 4 of St. Paul Park extended Easterly.
>
> AND
>
> Lots 1 to 24, inclusive, Block 114, WERTHEIMER'S FIRST ADDITION, as surveyed and platted and now on file and of record in the office of the Register of Deeds of Washington County, Minnesota, including any streets vacated or being vacated which accrue to said property by the reason of said vacation; and,
>
> Lots 8 to 24, inclusive, Block 115, in WERTHEIMER'S FIRST ADDITION, as surveyed and platted and now on file and of record in the office of the Register of Deeds of Washington County, Minnesota, including any streets vacated or being vacated which accrue to said property by the reason of said vacation; and,
>
> Block 113, Lots 12 to 20, inclusive, Block 116 of Division No. 4 of St. Paul Park, as surveyed and platted and now on file and of record in the Office of the Register of Deeds Washington County Minnesota.

6. That the Petitioner's property, described in petitions A-6185 and A-6186, located west of County Road 75 will remain in Grey Cloud Island Township.
7. That the effective date of the annexation is February 1, 2001.

Dated this 29th day of December, 2000

BEVERLY JONES HEYDINGER
Administrative Law Judge

Reported: Transcribed (six volumes).

MEMORANDUM

This is a consolidated proceeding under Chapter 414 to consider two petitions filed by R. Gordon Nesvig ("Petitioner") to annex certain property in Grey Cloud Island Township to the adjoining municipalities of St. Paul Park and Cottage Grove, and to consider a Joint Resolution for Orderly Annexation of a portion of the Township to St. Paul Park, signed by St. Paul Park and Grey Cloud Island Township. Consideration of these matters was delegated to the Office of Administrative Hearings by Dean Barkley, Director, Office of Strategic and Long Range Planning, pursuant to Minn. Stat. § 414.12, subd. 2 (2000).

Description of the Property

The map attached to this memorandum shows the subject property, its location within Grey Cloud Island Township, its relationship to St. Paul Park, Cottage Grove and the Mississippi River, and the principal highways. It was prepared by the Municipal Boundary Adjustments Office.[131]

The subject area of the petitions and Joint Resolution is drawn on to the map, as is other property owned by the Petitioner in St. Paul Park and Cottage Grove. The map also shows the location of the Marathon Ashland Petroleum property, a triangular piece east of the Burlington Northern railroad tracks, extending to the Township/Cottage Grove border. This property is included in the Joint Resolution.[132]

There is also some property in the northern portion of the Township that is not included in the Joint Resolution. Some is owned by Mr. Nesvig and included in Petition A-6185. The Township asserts that St. Paul Park could annex this property by ordinance in the event that the Joint Resolution is approved. Except for Petitioner, none of the property owners in this small area attended the hearing or have submitted

[131] The City of Cottage Grove is not marked on the map. It borders Grey Cloud Island Township at the eastern edge of the property included in Petition A-6186, running north along the dark line marking Cottage Grove's border with St. Paul Park, and south along Geneva Avenue South.
[132] Marathon Ashland Petroleum is agreeable to remaining in the Township or being annexed to either St. Paul Park or Cottage Grove. See Ex. 66, letter from James M. Nelson, Minnesota Division Manager.

comments in the course of this proceeding. The property is just beyond St Paul Park's current sewer and water systems. There is, however, no distinguishable landmark dividing the Township from St. Paul Park in this area.

All of the subject property west of the centerline of County Road 75 is part of the Mississippi River corridor, and is designated as a "Critical Area".[133] Because of this designation, Grey Cloud Island Township is required to develop a comprehensive plan that addresses the area's preservation and potential development. Whether this portion of the subject property remains in the Township or becomes part of either city, planning must follow the Critical Area guidelines. Designation of the property in the Critical Area as "Rural Open Space" is likely to remain unchanged. Zoning ordinances must be enacted that are consistent with this status and are subject to review and approval by the Metropolitan Council and DNR.[134]

All of the subject property east of County Road 75 is outside the Critical Area. It is currently designated for agricultural use, but is vacant and has limited utility for agriculture. From time to time, animals graze on the land. There are no dwellings or businesses located on the property east of the county road.

The entire Township is rural, and sparsely developed. The only commercial operation of any size is the mining conducted by Aggregate Industries/CAMAS. The mining is expected to continue for 20 to 40 more years, and has no particular bearing on these proceedings. Apart from the mining, there is no commercial development along the Mississippi River within the Township, or along the river immediately north or south of the Township boundaries.

Procedural History

Following the delegation of the petitions and publication of the Notice of Hearing, a hearing was held for six days, commencing on October 18, 2000 and adjourning on October 25, 2000.

At the beginning of the hearing the Petitioner made two motions. He moved to withdraw his petition to annex approximately 200 acres to St. Paul Park (A-6185), and he moved to amend his petition to annex approximately 400 acres to Cottage Grove (A-6186), to include the 200 acres identified in petition A-6185. That is, the Petitioner requested that all of his property identified in both petitions be annexed to Cottage Grove. The motions were taken under advisement. However, as all the parties to the proceeding and the subject property remained unchanged, the hearing was held as scheduled.

Following the close of the hearing, but prior to submission of the post-hearing briefs, the Director of the Office of Strategic and Long Range Planning received a Joint Resolution for Orderly Annexation signed by the City of St. Paul Park and the Town of Grey Cloud Island. The Township and St. Paul Park requested that the Office of Strategic and Long Range Planning approve the orderly annexation and dismiss the pending petitions. On November 9, 2000, the Director received supporting documentation that completed the filing. By letter dated November 17, 2000, Director

[133] Executive Order 79-19; 3 S.R. 1680, 1691, March 12, 1979.

[134] All of the western portion is owned by Petitioner. There is one parcel in the middle excluded from the petitions, owned by Mr. Warren Isaacs:

Barkley delegated the Joint Resolution for Orderly Annexation, OA-718/718-1, to the Office of Administrative Hearings, to be considered as a part of this proceeding.

On November 30, the Petitioner moved for consolidation of the petitions for annexation (A-6185 and A-6186) and the joint resolution (OA-718/718-1) and requested intervention as a party.

Thus, the following matters are pending and are addressed in this order:

- The initial petitions, A-6185 and A-6186 filed by the Petitioner. The initial petitions were supported by St. Paul Park and Cottage Grove and opposed by the Township.
- The Petitioner's motions to withdraw petition A-6185 and amend petition A-6186. The Township and St. Paul Park opposed the motions; Cottage Grove took no position.
- The Joint Resolution for Orderly Annexation, OA-718/718-1, of St. Paul Park and the Township to annex certain property to St. Paul Park and dismiss petitions A-6185 and A-6186. It is opposed by Cottage Grove and the Petitioner.
- The Petitioner's motion to consolidate the two proceedings and to permit the Petitioner to intervene. The Township and St. Paul Park support Petitioner's motion to consolidate but oppose Petitioner's intervention.

A. Motions to Withdraw Petition A-6185 and Amend A-6186

The Petitioner's motions to withdraw one petition and amend the other do not alter the property to be affected by these proceedings. All parties were given a full opportunity to present evidence on the statutory criteria and their views about the suitability of annexation to either municipality during six days of hearing and in the post-hearing submissions. The motions reflect the Petitioner's change of preference for which city annexes the property, but does not alter the parties, the property affected, or the evidence about each of the criteria enumerated in statute. For that reason the motion are denied. The Petitioner's preference for annexation of all 600 acres to Cottage Grove was included in his testimony and written submissions and was duly considered.

At the hearing, the Township argued that the motion should be denied because it unfairly prejudiced the parties' preparation for hearing. For the sake of proceeding through the hearing in an orderly way, the Petitioner began the presentation of the evidence. The Township and St. Paul Park were considered adverse to the Petitioner, and Cottage Grove was treated as nonadverse.[135] The parties proceeded in the specified order throughout the hearing. However, the parties were allowed liberal cross-examination of the witnesses and were given the opportunity to request a continuance if they believed that the unfolding of the evidence prejudiced them in some way or required rebuttal that they were not prepared to present. No such request was made; all parties had a full opportunity to present evidence relative to the subject property.

[135] Minn. R. 6000.1510 (1999).

B. Consideration of the Joint Resolution for Annexation and Consolidation

The joint annexation agreement has been appropriately referred to the Administrative Law Judge for consideration even though the process for consideration of a joint annexation agreement under Minn. Stat. §414.0325 differs from the process for considering a petition for annexation under Minn. Stat. §414.031. A joint annexation agreement ordinarily proceeds under a different review process than a petition for annexation, but the criteria for reviewing a joint annexation agreement and a petition for annexation are identical. [136]

Where both avenues are pursued for the same property, the courts have wisely concluded that the two matters should be combined, the criteria applied and one decision issued. This assures a fair, complete review and a decision that fully resolves any competing claims for the property. As the court held in Village of Farmington v. Minnesota Municipal Commission,[137] the ultimate decision of such competing matters is with one decisionmaker who has broad authority to apply specified criteria. Consideration of both the joint annexation agreement and the petitions is necessary to perform the "intended role and function of aiding, advancing and authoritatively controlling the orderly expansion of existing municipalities."[138] Under the circumstances presented here, consolidation of the petitions and Joint Resolution is apppropriate to address the issues and fully resolve the property's status.

With a small exception the property included in the Joint Resolution for Orderly Annexation falls within the property subject to the petitions.[139] All of the affected parties had notice of the hearing, fully participated, and had the opportunity to elicit considerable testimony about the appropriateness of annexation. The hearing record includes excellent exhibits. The testimony and exhibits provide the evidentiary basis for a reasoned analysis and should not be discarded or overlooked in reaching a final decision. The record will also facilitate judicial review, if necessary. Thus, the request by St. Paul Park and the Township to dismiss the petitions is denied.

The petitions as originally filed and the joint annexation resolution are appropriately consolidated and Mr. Nesvig, the Township, St. Paul Park and Cottage Grove are all parties to the consolidated proceeding.[140]

Position of the Parties

St. Paul Park initially supported Petition A-6185, and was neutral to Petition A-6186. However, it is opposed to annexation of all the property in both petitions to Cottage Grove. Cottage Grove initially supported Petition A-6186 and was neutral to Petition A-6185. Cottage Grove remained neutral with respect to petitioner's motion to amend Petition A-6186 to include all 600 aces, although it maintains that it can provide urban services to all 600 acres.

The Township opposes the annexation petitions. It has, however, entered into the Joint Resolution for Orderly Annexation with St. Paul Park for the property east of County Road 75. This action is consistent with the projection in its comprehensive plan

[136] Minn. Stat. § 414.0325, subd. 3 (2000).
[137] 284 Minn. 125, 170 N.W.2d 197, 198 (1969)
[138] Id. At 203.
[139] As stated above, Marathon Ashland Petroleum owns property included in the Joint Resolution.
[140] Minn. R. 6000.0100, subp. 2.

that future development of this portion of the subject property is likely to occur, and the strong sentiment of its residents to retain ties to St. Paul Park. Thus, one must conclude that the Township is willing to relinquish control of the eastern portion of the property to St. Paul Park to maintain their shared boundary and historic association, and to redefine the Township boundaries to be consistent with the Critical Area boundaries. This action may reinforce the Township's expressed desire to retain its rural character.

St. Paul Park shares the Township's interest in maintaining a common boundary. Without annexation, it has no property available for any significant new development. The property included in the joint resolution provides its best opportunity for growth.

Burden of Proof

The burden of proof in this matter is on the Petitioner to show that the statutory criteria support granting the petitions. The burden of proof is on the Township and St. Paul Park to show that the joint resolution is supported by the statutory criteria and should be approved.

Scope of Authority

In exercising the authority to decide annexation the decision-maker is not limited to granting or denying the petitions or approving or disapproving the joint annexation agreement. The discretion granted is more broad. The boundaries may be increased or decreased to include only the area that is now or about to become urban or suburban in character, to add property to protect the symmetry of the area, or to exclude property that may be better served by another unit of government. Annexation may be ordered if it is in the "best interest" of the subject area. The boundaries may be adjusted to follow visible, clearly recognizable physical features, or the decisionmaker may conclude that a different municipality can better serve the subject property.[141] It is clear that the Legislature intended that the decisionmaker broadly examine the best, most appropriate disposition of the property, and apply the detailed criteria set out in the statute.

In so doing, one must balance the need for sound urban development with preservation of agricultural land and open spaces.[142] Orderly, regulated development is valued, along with the goal of stabilizing and protecting open areas that are not needed for more intensive development.[143]

The Legislature enacted a procedure to insure that the creation of a municipality or changes to a municipal boundary would be determined in a fair way, according to established criteria. In so doing, it made the following findings relevant to this proceeding:

> [T]hat sound urban development and preservation of agricultural land and open spaces through land use planning is essential to the continued economic growth of this state;
>
> [That] municipal government most efficiently provides governmental services in areas intensively developed for residential, commercial, industrial, and governmental purposes; and township government most

[141] Minn. Stat. § 414.031, subd. 4.
[142] Minn. Stat. § 414.01, subd. 1.
[143] Id.

efficiently provides governmental services in areas used or developed for agricultural, open space, and rural residential purposes; and

[That] annexation to existing municipalities of unincorporated areas unable to supply municipal services should be facilitated.[144]

Against this framework, the Legislature directed that certain statutory factors be weighed in the decision to grant or deny a petition for annexation and for review of a joint resolution for orderly annexation.[145] Each of those factors has been considered.

Since the subject property abuts developed parts of St. Paul Park, and a significant portion lies within the Mississippi River Critical Area, resolving the future development of the property will stabilize its status and facilitate long-range planning for the Township and both cities.

Comprehensive Land Use Planning Process

Grey Cloud Island Township, St. Paul Park and Cottage Grove have each undertaken a comprehensive planning process for land use and public facilities, as required by Minn. Stat. §473.858. Cities and towns within the metropolitan area are required to complete such plans.[146]

The Administrative Law Judge is mindful of the time and resources each of the governmental units has invested in this process. The process requires extensive research, technical consultation, public participation, and ultimately, the reconciliation of conflicting interests. Not only must local government develop a plan, but that plan must be reviewed by the adjacent governmental units, and then by the Metropolitan Council for compatibility with other plans and conformity with planning for the metropolitan area as a whole.[147] The governing statute requires that a comprehensive plan address many issues, including transportation, sewer, water, parks and open spaces, among others.[148] To that end, the local government must assess the property within its boundaries, consider current use, project future demand, and develop a plan for growth.

The formulation of the comprehensive plan is a significant undertaking. Its purpose is to guide the development of infrastructure and growth in the metropolitan area, and serve as a template for planning and development issues as they arise. The thoroughness of the process is obvious in the detailed information provided during this hearing and the knowledgeable witnesses who testified.

Going through the process requires the local government to reconcile varying points of view and development ideas. The decisions reflected in the plan may not be to the liking of some landowners or business owners who would prefer a different approach. Some may be disappointed if the plan projects limited extension of urban services to their property; others may be disappointed if urban services are projected to extend into an area that they would prefer remain rural. Yet the purpose of the comprehensive planning process is to consider those points of view and develop a long-range plan to guide orderly development, balancing personal interests, local interests and the interests of the metropolitan area as a whole.

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[144] Minn. Stat. §414.01.
[145] Minn. Stat. §§414.031, subd. 4; 414.0325, subd. 3.
[146] Minn. Stat. §§473.86; 473.861.
[147] Minn. Stat. §473.175.
[148] Minn. Stat. §473.859.

In this case, there is an additional level of planning and scrutiny required for a significant portion of the subject property. The portion of the subject property to the west of the center line of County Road 75 is part of the Mississippi River Critical Area Corridor ("Critical Area"), Rural Open Space District, as designated by Executive Order 79-19. Land within the Critical Area has additional limitations on its development and is subjected to additional review by the Minnesota Department of Natural Resources and the Metropolitan Council.[149] Local units of government with land within the Critical Area are required to develop plans for that land that take into account its protected status. Within the Critical Area, development is very broadly defined to include "any material change in the use or appearance of any structure or land."[150] The Critical Area is also part of the federal Mississippi National River and Recreation Area ("MNRRA"), and its development must be consistent with federal regulations and guidelines.[151]

The Department of Natural Resources and the Metropolitan Council review the comprehensive plans to assure that planning for land within the Critical Area meets the guidelines of Executive Order 79-19 and governing statutes and regulations.

The Grey Cloud Island Township Comprehensive Plan clearly expresses its desire and intent to remain rural, and not to pursue urban services. Its plan to retain its rural character has been approved by the Metropolitan Council and the Department of Natural Resources. Both St. Paul Park and Cottage Grove were given copies of Grey Cloud Island Township's proposed comprehensive plan, and there is no evidence that either city opposed that plan.

Although the Township wants to preserve its rural character, it has acknowledged that at some future date, urbanization of the subject property east of County Road 75 may be needed to accommodate the expanding metropolitan area. [152] The Stevens Ridge development in St. Paul Park adjoins the Township on its northeast border. The bluff line and railroad may impede expansion from the east, but there are no barriers to development from the north.

It is consistent with the comprehensive planning process to annex the eastern portion to a municipality so that the Township can remain rural and the responsible municipality can begin the planning necessary to develop the property in a considered, cost-effective way.

By entering into the Joint Resolution for Orderly Annexation, the Township and St. Paul Park have expressed their desire for a planned, orderly transfer of property. It is understood that if annexation is approved, both the Township and St. Paul Park must amend their comprehensive plans to address the change in jurisdiction. Through the process of amending the comprehensive plan, more specific plans for development of the eastern portion of the subject property will evolve. Plan amendments will be subject to public discussion and scrutiny.

The comprehensive plans provide the sort of background that the Legislature has favored in its description of the annexation process.[153] A comprehensive plan includes

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[149] Minn. Stat. Ch. 116G.
[150] Minn. Stat. §116G.03, subd. 5.
[151] Minn. Stat. §116G.15 (a).
[152] The Illustrative MUSA line drawn by the Metropolitan Council as a guide for acceptable urban expansion included a portion of the township, including the subject property.
[153] Minn. Stat. § 414.01, subd. 1.

much of the information that must be applied to the statutory criteria applied to annexation decisions. The petition of one landowner to develop his property must be evaluated in part in the context of the long range planning that has been done by the local governmental units. To do otherwise is to allow a landowner who may be dissatisfied with the comprehensive plan to institute a separate proceeding and argue his or her case in isolation, rather than in the larger context of the comprehensive planning process.

In this case, all three local units of government have been aware for many years that the Petitioner would like to develop his property and would like to have urban services extended to it in order to maximize its development potential. Although the subject property has not been specifically designated for urban development in the comprehensive plans, the possibility of annexation has been much discussed. The Grey Cloud Island Township Comprehensive Plan specifically refers to the possibility of future annexation.[154] The Metropolitan Council and Washington County are also aware of the annexation proceedings and have not taken a position.[155] Expansion of urban services into the eastern portion of the subject area is consistent with planned, orderly expansion of the urban area. Preventing expansion into the western portion is consistent with the Critical Area Plan and will protect the Township's stated intent to remain rural.

The unsettled status of the land has created tension and uncertainty. The Township does not want to take on the responsibility for planning urban services. Yet the land is vacant, available and suitable for development and immediately contiguous to St. Paul Park which is fully developed. Planning for urban development takes time. Not only must land be available for development, it takes time to determine the appropriate use for the land, to plan, design and install water and sewer, and arrange for permits and financing. Annexation is the first step in this process because it is a final determination that urban development of the property is appropriate, and that planning should commence.

The Petitioner contends that the Township and St. Paul Park want to "thwart" meaningful development of his property. The Township's plan intentionally limits development on his property, and other property in the Township, to retain its rural character, and remain consistent with its ability to provide government services. It is inherent in such a process that some landowners will find that their individual preferences for development are thwarted. St. Paul Park's plans are unclear, but by entering into the Joint Resolution for Orderly Annexation it has acknowledged that urban development of the area is imminent.

Application of the Statutory Factors to the Annexation Decision

The findings of fact address each of the statutory criteria. Each one was considered in reaching this decision. Weighing all of the facts, it is apparent that the eastern and western portions of the property should be treated differently. The factors are incorporated into the analysis that follows.

Area West of County Road 75

There is no basis to annex any of the property to the west of County Road 75 at this time. It is currently undeveloped and is not about to become urban or suburban in

[154] Ex. 34, p. 24.
[155] Ex. 46; Harper at 584.

character. It has been designated as Rural Open Space under the Critical Area Plan, and its location within the Critical Area will tightly restrict any development.

As stated in Executive Order 79-19, the purposes of the Critical Area designation are:

a. To protect and preserve a unique and valuable state and regional resource for the benefit of the health, safety and welfare of the citizens for the state, region, and nation;

b. To prevent and mitigate irreversible damage to this state, regional, and national resource;

c. To preserve and enhance its natural, aesthetic, cultural, and historical value for the public use;

d. To protect and preserve the river as an essential element in the national, state and regional transportation, sewer and water and recreational systems; and

e. To protect and preserve the biological and ecological functions of the corridor.[156]

The Petitioner wants to develop upper bracket housing and a commercial marina west of County Road 75. He is correct that the Critical Area designation does not foreclose all development. However, the guidelines for development of property designated as part of the Rural Open Space District state that:

> The lands and waters within this district shall be used and developed to preserve their open, scenic and natural characteristics and ecological and economic functions. Presently undeveloped islands shall be maintained in their existing natural state. The transportation function of the river shall be maintained and preserved.

With these limitations, any development in the Rural Open Space District will be closely scrutinized.[157] The presence of defined "natural communities" will also affect development.[158]

Executive Order 79-19 directs the local units of government and regional and state agencies to inventory existing and potential sites for commercial marinas and boat launching facilities.[159] Neither the Township, Washington County, Metropolitan Council nor Department of Natural Resources has expressed any interest in siting a marina in this vicinity, nor do the comprehensive plans reflect an unmet need for this public facility. The Petitioner proposes development of a marina as an "amenity" for private homeowners. It is unlikely that such a proposal would fit within the guidelines for river development in the Rural Open Space.

At this time the Township provides the necessary services and protections for the property west of County Road 75. There is no evidence of any risk to the public health,

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[156] Ex. 43.
[157] See Ex. 42.
[158] Wanberg at 509.
[159] Ex. 43, p. 7.

safety or welfare of this portion of the subject property or the persons residing there. The land use controls and planning in place are consistent with its designation as a Critical Area, and the goal of retaining rural open space. Even if the property were annexed to St. Paul Park or Cottage Grove, the Critical Area development restrictions would apply and it is not likely to be urbanized. As stated in section 414.01, subd. 1, township government most efficiently provides services to open space and rural residential areas.

The property along the river in St. Paul Park just north of the Township is undeveloped. Back from the bluff there is a junkyard and a couple of homes. There is no evidence that use of that property will change soon or require urban services.[160] Similarly, there is no encroaching development from the south of the subject property.

It can be argued that County Road 75 is an artificial boundary that will not impede development from the east. In fact it is the Critical Area designation that will impede extension of urban services, and the county road provides the Critical Area demarcation. It is also a clearly recognizable feature.

The Petitioner contends that the Metropolitan Council must have contemplated that the subject area, including the portion in the Critical Area, would be developed with urban services because it was included in that agency's Illustrative MUSA line. However, the testimony from the Council staff was clear that the Illustrative MUSA line was only a general guide for the local units of government, subject to change as specific comprehensive plans were developed. When Council staff specifically raised the apparent conflict between the Critical Area designation and MUSA, the Council directed the staff to give preference to the Critical Area designation.[161]

The Petitioner would like to develop the area along the bluff because it is high, dry, flat, wooded and would be the most desirable portion of his property for building expensive homes. However, because of the bedrock, development potential is limited unless urban services are extended to the property. The Township is mindful of the development potential, but has chosen to forego it in order to preserve the Township's rural character. Its choice was incorporated into its comprehensive plan and is consistent with the Critical Area designation.

Property East of County Road 75

All of the land included in the petitions and Joint Resolution east of County Road 75 is about to become urban or suburban and is appropriate for annexation. This portion of the subject property is not part of the Critical Area. By annexing the portion of the property to the east of the County Road, the Township boundary and Critical Area boundary will be virtually the same. The northern portion is immediately adjacent to the St. Paul Park, and very close to that city's existing urban services.[162] The northern portion is bordered on the north and east by residential development. Visually, expansion into the subject area would appear to be inevitable. There are no physical barriers to the expansion. The property is currently vacant, with some marginal

[160] Sittlow at 1021.
[161] Pinel at 691; see also Ex. 46.
[162] As discussed above, there is a small northern portion of Township that was excluded from both the petitions and the joint resolution.

agricultural use. It is not identified for agricultural preserve. There are no significant geological or environmental impediments to development.[163]

The Township does not currently provide urban services of any kind. Police and fire protection, building inspections, and emergency medical care are all provided pursuant to contracts with other jurisdictions. Water and sewer are provided by individual wells and septic systems. The Township does not have full-time staff or the governance structure to support urban services. Thus, if the subject property is to become urban, annexation to a city is appropriate.

It could be argued that only the northern portion of this property is about to become urban, the portion included in Petition A-6185. This portion, approximately 100 acres, is the area where development is likely to be staged most quickly. Development of the lower portion, about 250 acres, is likely to take longer. Much of the southeast corner has hard bedrock near the surface, which will constrain residential construction.[164] However, there is no natural boundary between the two portions. Including all of the eastern portion in the annexation order at this time is in the best interest of the subject property. St. Paul Park will be able to do appropriate long-range planning and assure that development of its infrastructure can accommodate growth in this area at a later date. If the southern portion remains in the Township, its future status will continue to be debated since it is not part of the Critical Area and development will continue to encroach upon it.

The Joint Resolution includes about 17 acres owned by Marathon Ashland Petroleum, to the east of the Petitioner's property and east of the Burlington Northern Railway, but inside the Township limits. This land should be included in the annexation order to avoid creating an inaccessible, severed island of Township property. Marathon Ashland Petroleum has no preference whether it remains in the Township or is annexed to one of the two cities.[165] Including it will straighten the eastern boundary of the annexed property. The railroad tracks will not hinder extension of water and sewer from St. Paul Park if development occurs, and there is access to the property via Geneva Avenue, east of the railroad tracks.

Urban development ordinarily increases the number of children attending school. All of the children attending public school in St. Paul Park, Cottage Grove and Grey Cloud Island Township are served by the South Washington County Independent School District No. 833. Thus, annexation to either St. Paul Park or Cottage Grove will not affect school planning. The district as a whole is growing, and is planning accordingly. The Superintendent, Mr. Hoke, testified that the district could accommodate the additional students who may be brought into the district if annexation of the subject property occurs.

Annexation to St. Paul Park

Annexation of the eastern portion of the subject property to St. Paul Park is more logical than annexation to Cottage Grove. There is little or no room for new residential development within the current St. Paul Park city limits. Although the Metropolitan

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[163] There may be two very small wetlands on the property, but it is not likely that these would preclude development. Ex. 34, fig. 7; Wanberg at 510.
[164] Ex. 34, Figs. 3, 4, 5.
[165] Ex. 66.

Council estimates an increase in the metropolitan population, and has estimated that significant growth will occur in the southeast portion of the metropolitan area, it has projected little increase in population or households for St. Paul Park. This is, in part, because all of the land in the city suitable for residential development has been developed. The only direction for St. Paul Park to expand is to the south. Development to the north is limited by the refinery and the City of Newport. Development to the east is limited by the City of Cottage Grove. The Mississippi River and Critical Area Corridor form the western border. If any significant growth is to occur, it must be to the south, into the eastern portion of the subject property. Growth in this area will be immediately contiguous to St. Paul Park's current boundary.

The main transportation access to the area, County Road 75, runs south from St. Paul Park. It is adequate to serve development of the northern portion of the eastern property. It may require improvements if all the eastern portion of the subject property is developed, but expansion can be planned to coincide with development.[166] Third Street in St. Paul Park becomes County Road 75 at the Township boundary. It, too, may require improvements to properly serve the annexed area. However, necessary improvements can be incorporated into planned development. There is little incentive for St. Paul Park to upgrade the road so long as the subject property remains part of the Township, or if the subject property is annexed to Cottage Grove.

There are no physical features that will prevent development south from St. Paul Park. The Burlington Northern railroad tracks are an impediment to improving road access from the east. It is difficult to negotiate additional rail crossings with the railroad, and overpasses are expensive and take up a considerable amount of land. However, with the pressure to improve access to Lower Grey Cloud Island and extend urban services into the subject property, it is just a matter of time before better access to property west of the rail line will have to be addressed. Its presence may delay development, but eventual improved access is probable.

St. Paul Park's sewer and water systems currently extend quite near to the boundary with the Township. There are viable plans to serve the subject area. The sewage interceptor has ample capacity. The city water system can handle a significant portion of the annexed area, although an additional well may be needed to fully serve the entire area.[167]

St. Paul Park currently provides fire and police protection to the subject property. It has the capacity to continue that protection if the property is annexed, and will continue to serve the rest of the Township as well. Emergency medical care is currently provided to both the Township and St. Paul Park by Cottage Grove and is expected to continue.

St. Paul Park presented little direct evidence of the fiscal impact of annexing the subject property. It has demonstrated its ability to develop high-density residential neighborhoods by successfully completing the Stevens Ridge development. Any capital improvements and new development will require amendment to its comprehensive plan and Metropolitan Council review.

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[166] Sittlow at 1016, 1027.
[167] Roos at 833-844; Sittlow at 1002.

Annexation to Cottage Grove

There is no basis to order annexation of the subject property east of County Road 75 to Cottage Grove. Admittedly, Cottage Grove is booming. It is expected to grow by about 8000 people between now and 2020, and the Metropolitan Council anticipates significant expansion of urban services within Cottage Grove. With that in mind, plans are underway to significantly increase the sewer capacity of the wastewater treatment facility that serves Cottage Grove and to extend the sewer lines into areas of the city not currently served. Improvements to Highway 61 are planned to handle the anticipated additional traffic. If the subject property were annexed to Cottage Grove, that city has the overall capacity to eventually serve it.

However, there is no apparent demand to extend Cottage Grove's boundaries into the subject property. There is plenty of space within the city's current boundaries to accommodate its planned growth, including substantial undeveloped property closer to its existing urban services. It would be preferable for development to move out from the current city center in a staged way rather than leaping over currently undeveloped land.

There are also impediments to extending services into the subject area. The railroad tracks, tank farm, change in elevation, distance from existing urban services and current roads would all impede urban development of the subject property. None of these are insurmountable, but in combination, one must conclude that development of other property within the city limits would be much less difficult. It would require significant development for several years to stage growth out from the center rather than to "leap frog" to the annexed property and develop an island. At this time, Cottage Grove is developing about 200 acres a year, although it projects that will increase through 2020.[168]

As stated in Cottage Grove's Comprehensive Plan, most of its residential development in the past 40 years has been from west to east, virtually all on the east side of Highway 61.[169] Expansion of the Cottage Grove MUSA line occurs in the northwest portion of the city, east of Highway 61.[170] In contrast, growth of the commercial and industrial area of the city is projected to occur on the west side of Highway 61, filling in the area between 61 and current residential development, but not extending either commercial/industrial or residential development west of the current residential development.[171] There is a "Transition Zone 2" included in the plan which extends somewhat west of the current residential development, and which could be designated for low to medium density residential development. This area immediately adjoins the current MUSA's southwest corner, extending the line further west. However the bluff line will be a natural barrier to further immediate westward expansion.[172] Cottage Grove's own planning documents describe the problems extending urban services from its current service area into the subject property.

Access by road to the subject property from Cottage Grove is limited to 103rd Street, a country road that includes a one-lane railroad underpass. Safety at this location is a concern. At some point, Cottage Grove envisions improving the roadway

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[168] Lindquist at 919, 920.
[169] Ex. 55, p. 10.
[170] Id., p. 12.
[171] Id., p. 15.
[172] Id., p. 34,44; Schlichting at 189-192.

for two-way access to the far southwest section of the city. Development of additional access by road will be limited by the location of the Burlington Northern railroad tracks. As the Cottage Grove Comprehensive Plan states: "At no time in the future should any more at-grade rail/roadway crossing be approved without extensive exploration into other safer alternatives."[173] At some point, a railroad crossing will likely occur, but until then, access to the subject property from Cottage Grove will be very difficult.

Cottage Grove annexed Lower Grey Cloud Island in 1983.[174] That property has remained undeveloped for almost 20 years. Although planning is in progress, there are no final plans and no reason to assume that development of that area would naturally lead to urban development of the subject property. Any assumptions about the effect of development of Lower Grey Cloud Island on the subject property would be purely speculative.

If annexation to Cottage Grove were approved, the undeveloped portion of Cottage Grove would extend up into the developed portion of St. Paul Park, virtually eliminating any possible expansion of St. Paul Park.

Petitioner would prefer that all of his property be annexed to Cottage Grove. He believes Cottage Grove is aggressively planning for future development and will be more likely to push ahead with development because it has a full-time planning staff and engineer. Access to the Petitioner's property from the east is more attractive than access through St. Paul Park. He is more confident that Cottage Grove will support his development efforts.

The Petitioner's arguments have force, and as the primary landowner, his preferences are important. But, as discussed above, there are other countervailing factors. If the property is to be developed, there are far fewer barriers to developing south from St. Paul Park. The property is closer to the currently developed urban areas of that city, and the boundary lines would be more symmetric. There are no physical impediments to expansion from St. Paul Park. Although Cottage Grove could contract with St. Paul Park to provide urban services in the area, there is no logical reason to annex the property to Cottage Grove if infrastructure will be developed from St. Paul Park.

Viability of the Township Following Annexation

There is no evidence that annexation of the property east of County Road 75 will have any significant detrimental effect on the remainder of the Township. The property generates very little tax revenue for the Township, and the Township has no investment in infrastructure or structures on the subject property. The Township will remain viable without the annexed property. The Township wants to retain a common boundary with St. Paul Park and would like to continue to receive police and fire protection from that city. The annexation would preserve the common boundary and should not affect fire and police protection.

By granting the annexation of the property to the east of County Road 75, the Township's borders will be the same as the borders of the Critical Area. This designation is consistent with the Township's desire to retain its rural character. The

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[173] Ex. 55, p. 59.

[174] Town of Grey Cloud v. Minnesota Municipal Bd., 330 N.W.2d 884 (Minn. 1983).

contiguity of the Township and Critical Area boundaries may also strengthen protection of the Township's rural character.

The Township has entered into a Joint Resolution for Orderly Annexation to St. Paul Park. Part of the calculus for such a resolution is its determination that the Township can remain viable after the annexation has occurred.

Admissibility of the Metropolitan Council's submission (Exh. 46)

Petitioner objected to the admissibility of Exhibit 46, a letter from James Uttley, Senior Planner, Metropolitan Council, dated January 6, 2000. However, the Office of Strategic and Long Range Planning solicited the submission, and is required to consider it.[175] It is the role of the Metropolitan Council to oversee planning throughout the Metropolitan area, and preparing such submissions is within the scope of its ordinary course of business. Exhibit 46 was already a part of the record referred to this office by the Office of Strategic and Long Range Planning, and is directly relevant to these proceedings. Although the signator was not present, other staff of the Metropolitan Council involved in its preparation and in the review of the comprehensive plans for St. Paul Park, Cottage Grove and the Township were available. Exhibit 46 was properly admitted.[176]

Conclusion

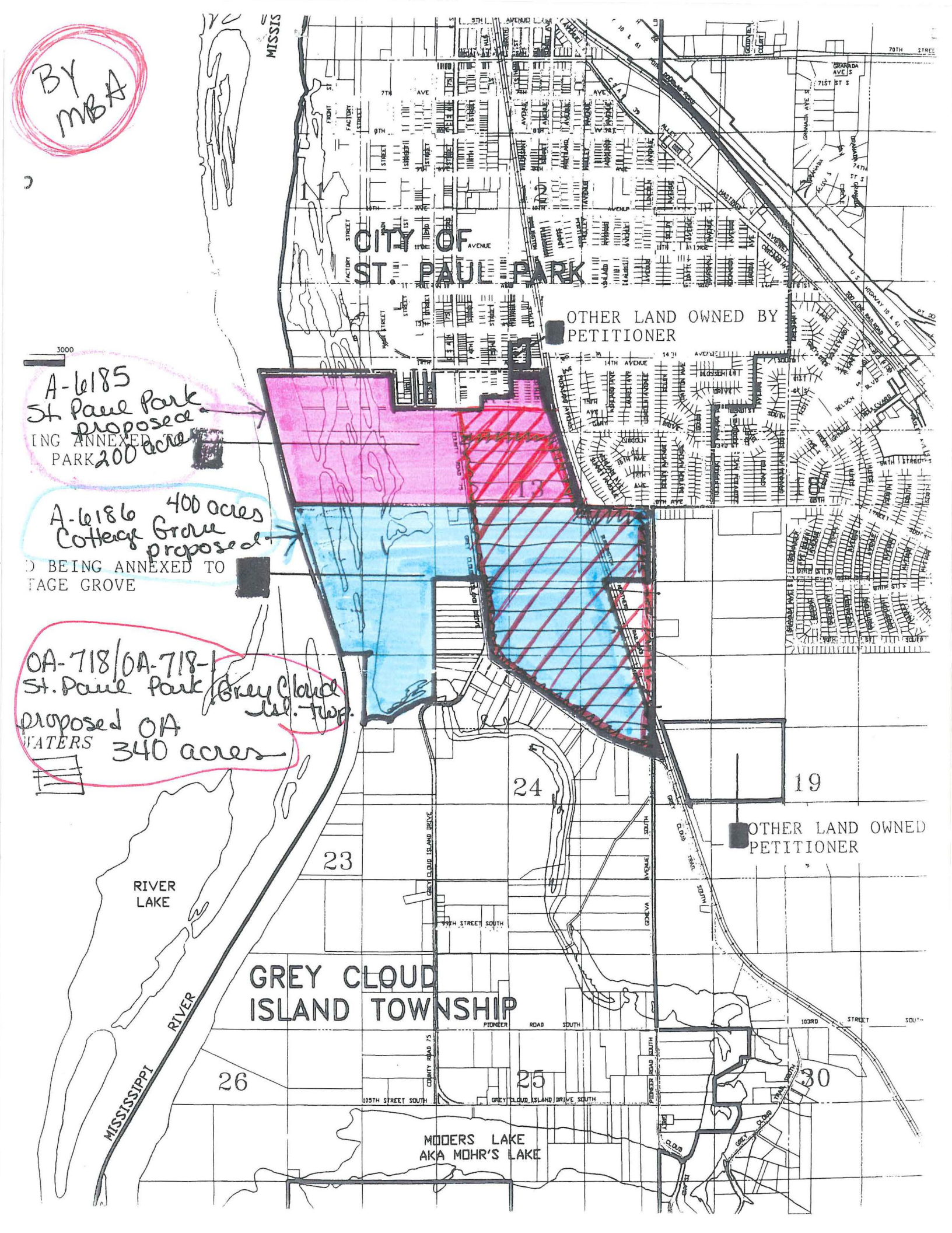
The record in this proceeding has been carefully reviewed and each statutory factor considered. It is the best interests of the subject property west of County Road 75 to remain in the Township since there is no evidence that it is now, or is about to become, urban or suburban in character. Retaining Township control is consistent with the property's status as part of the Rural Open Space District within the Critical Area Corridor and the Township's Comprehensive Plan.

Annexation of the subject property east of County Road 75 to St. Paul Park is in the best interests of that property, and it is about to become urban or suburban in character. Annexation will assure the planning and development of urban services into the area by a city that has the capacity to manage it. Development will expand contiguous to a fully developed urban area.

B.J.H.

[175] Minn. Stat. § 414.02, subd. 3 (e); see also § 414.01, subds. 8 and 17.

[176] The admissibility of a similar submission was upheld in Town of Forest Lake v. Minnesota Municipal Board, 497 N.W.2d 289, 291 (Minn. App. 1993).


BY MBA
CITY OF ST. PAUL PARK
OTHER LAND OWNED BY PETITIONER
3000
A-6185
St Paul Park proposed
ING ANNEXED TO
PARK 200 acres
A-6186 400 acres
Cottage Grove proposed
BEING ANNEXED TO
TAGE GROVE
OA-718/OA-718-1
St. Paul Park/Grey Cloud Isl. Twp.
proposed OA
WATERS 340 acres
OTHER LAND OWNED
PETITIONER
RIVER LAKE
GREY CLOUD ISLAND TOWNSHIP
MISSISSIPPI RIVER
MOORERS LAKE
AKA MOHR'S LAKE
GREY CLOUD ISLAND DRIVE
99TH STREET SOUTH
105TH STREET SOUTH
PIONEER ROAD SOUTH
COUNTY ROAD 75
GREY CLOUD TRAIL SOUTH
103RD STREET SOUTH
70TH STREET
7TH AVE
9TH AVENUE
14TH AVENUE
HASTINGS AVENUE
GRANADA AVE S
71ST ST S
74TH ST S
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RECD BY MMB DEC 2 0 2004

15-2900-13147-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF ADMINISTRATION

In re the Petition for Municipal Boundary Adjustments:

St. Paul Park/Grey Cloud Island Township (A-6185);

Cottage Grove/Grey Cloud Island Township (A-6186).

St. Paul Park/Grey Cloud Island Township (OA-718/718-1)

ORDER

Appearances: Laurie Miller, Frederikson & Byron, P.A., 200 South Sixth Street, Suite 4000, Minneapolis, MN 55402-1425, and R. Gordon Nesvig, Attorney at Law, Box 255, 7501 80th Street, Cottage Grove, MN 55016-0255, on behalf of R. Gordon Nesvig, the petitioner; Patrick J. Kelly and Sarah Sonsalla, Kelly & Fawcett, 444 Cedar Street, Suite 2350, St. Paul, MN 55101, on a limited basis on behalf of Grey Cloud Island Township. James F. Shiely, Jr., Gearin & Shiely, P.A., 325 Cedar Avenue, Suite 500, St. Paul, MN 55101-1017 on behalf of the City of Saint Paul Park; Corrine Thomson, Kennedy & Graven, 200 South Sixth Street, Suite 470, Minneapolis, MN 55402, on behalf of the City of Cottage Grove.

An Order for Annexation was issued on December 29, 2000, and an amended Order was issued on January 11, 2001. Mr. Nesvig appealed those orders to the Washington County District Court. On February 8, 2002, an Order was filed in the Washington County District Court remanding the matter to the Office of Administrative Hearings for further proceedings. The initial orders were not stayed pending the review in District Court, nor were they vacated or suspended by the District Court's Order.[1]

On June 19, 2002, the Administrative Law Judge issued an Order setting the schedule for filing supplemental testimony and for hearing. Thereafter, the parties entered into a series of stipulations for continuance to pursue settlement. The last such stipulation expired on August 31, 2004.

[1] Minn. Stat. § 414.07, subd 2 (b) and (c).

RECD BY MMB DEC 2 0 2004

On October 1, 2004, Mr. Nesvig filed a Withdrawal of Request for Further Review of the Order for Annexation Dated December 29, 2000, and the Amended Order for Annexation Dated January 11, 2001. Following discussion among the parties at a conference on November 9, 2004, a Prehearing Order was issued on November 12, 2004, directing the parties to notify the undersigned by December 15, 2004 if any one of them objected to the termination of this proceeding. If not, their acquiescence would be treated as a stipulation by the parties that the Order of December 29, 2000, as amended January 11, 2001, constitutes the final decision in this proceeding.

Mr. Nesvig filed a Clarification to the Withdrawal on November 10, 2004, withdrawing all objections to the terms of the initial order, as amended, and waiving any additional right he may have to contest it.

At a meeting of the Town Board of Grey Cloud Island Township on December 13, 2004, the Town Board voted not to challenge Mr. Nesvig's request for Withdrawal, or the termination of this proceeding.[2] No other party has filed any objection to termination of this proceeding. In previous correspondence the City of Cottage Grove and the City of Saint Paul Park have stated their assent to termination of this proceeding.[3]

IT IS HEREBY ORDERED:

1. The Order of December 29, 2000, as amended January 11, 2001, is the final decision in this proceeding.

2. The file shall be closed and returned to the Office of Boundary Adjustments at the Department of Administration.

Dated this 17th day of December 2004.

BEVERLY JONES HEYDINGER
Administrative Law Judge

[2] Letter dated December 14, 2004, signed by Richard Adams, Chairman, Town Board, and Richard Mullen, Clerk.
[3] Letter from James F. Shiely, Jr., dated November 2, 2004; letter from Corrine H. Thompson, dated November 4, 2004.

REC'D BY MMB DEC 2 0 2004

NOTICE

This is the final administrative decision in this case. Any person aggrieved by this Order may appeal to the Washington County District Court pursuant to Minn. Stat. § 414.07.